

## Appendix Exhibit 35

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<p style="text-align: right;">5</p> <p>1 A. It is.</p> <p>2 Q. And you understand that if you don't do that, that</p> <p>3 the answer you give is the answer that you intended to give,</p> <p>4 and that you understood the question.</p> <p>5 A. Okay. I understand.</p> <p>6 Q. Okay. Would you state your full name and address,</p> <p>7 please.</p> <p>8 A. John Anthony Onorato. 711 West Tenth Street,</p> <p>9 Erie, Pennsylvania 16502. And that's my home address.</p> <p>10 Q. How old are you, Mr. Onorato?</p> <p>11 A. I'm 40.</p> <p>12 Q. 40 years old. And I would like to ask you a</p> <p>13 little about your educational background. Where did you go</p> <p>14 to high school?</p> <p>15 A. Mercyhurst Preparatory School.</p> <p>16 Q. When did you graduate?</p> <p>17 A. 1983.</p> <p>18 Q. What did you do after that?</p> <p>19 A. I attended Gannon University.</p> <p>20 Q. Okay. And did you graduate from Gannon?</p> <p>21 A. Yes.</p> <p>22 Q. When was that?</p> <p>23 A. 1987.</p> <p>24 Q. And what degree did you receive from Gannon?</p> <p>25 A. Bachelor of arts.</p>	<p style="text-align: right;">7</p> <p>1 A. The summer after graduating.</p> <p>2 Q. Okay.</p> <p>3 A. August of 1990.</p> <p>4 Q. You passed on the first attempt?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What did you do after that?</p> <p>7 A. In what way?</p> <p>8 Q. After you graduated from law school, did you seek</p> <p>9 employment, or did you go to more school, or did you take a</p> <p>10 vacation?</p> <p>11 A. I was employed both prior to taking the bar exam</p> <p>12 and after taking the bar exam.</p> <p>13 Q. And where were you employed?</p> <p>14 A. With the law firm of Griffith Strickler Lerman</p> <p>15 Solymos &amp; Calkins.</p> <p>16 Q. Where are they?</p> <p>17 A. York, Pennsylvania.</p> <p>18 Q. What type of work did you do there?</p> <p>19 A. I was an associate, primarily engaged in insurance</p> <p>20 defense work.</p> <p>21 Q. When did you start working there? 1990?</p> <p>22 A. In what capacity?</p> <p>23 Q. In any capacity.</p> <p>24 A. I began there as a law clerk between my second and</p> <p>25 third year of law school.</p>
<p style="text-align: right;">6</p> <p>1 Q. Did you have a major?</p> <p>2 A. Yes.</p> <p>3 Q. What was that?</p> <p>4 A. Political science.</p> <p>5 Q. Okay. What did you do after you graduated from</p> <p>6 Gannon?</p> <p>7 A. I attended Dickinson -- the Dickinson School of</p> <p>8 Law.</p> <p>9 Q. Okay. Did you graduate from there?</p> <p>10 A. Yes.</p> <p>11 Q. And when was that?</p> <p>12 A. 1990.</p> <p>13 Q. Did you receive any honors or awards while you</p> <p>14 were at Dickinson?</p> <p>15 A. Yes.</p> <p>16 Q. What were those?</p> <p>17 A. I was selected to Who's Who of American Law</p> <p>18 Students. I was also an editor for the Dickinson Journal of</p> <p>19 International Law.</p> <p>20 Q. Okay. And what did you do after you graduated?</p> <p>21 A. One moment. I also received an award, the ABA</p> <p>22 Award for State and Local Government Law.</p> <p>23 Q. And did you take the Pennsylvania bar exam?</p> <p>24 A. Yes.</p> <p>25 Q. When did you do that?</p>	<p style="text-align: right;">8</p> <p>1 Q. And you continued your employment; became an</p> <p>2 associate once you passed the bar?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And how long were you employed at the</p> <p>5 Griffith firm?</p> <p>6 A. From my time as an -- from my time as a --</p> <p>7 Q. From the time you passed the bar.</p> <p>8 A. Say 1990 to maybe December of 1992.</p> <p>9 Q. Where did you go in December of 1992?</p> <p>10 A. Returned to Erie.</p> <p>11 Q. And were you employed in Erie?</p> <p>12 A. I began my education at Gannon University for an</p> <p>13 MBA.</p> <p>14 Q. Did you complete your MBA?</p> <p>15 A. Yes.</p> <p>16 Q. When was that?</p> <p>17 A. Let's see. It took 18 months. I began in January</p> <p>18 of 2003. So May of 2005. Is that 18 months?</p> <p>19 Q. Sounds like --</p> <p>20 A. It was 18 months.</p> <p>21 Q. It would have been May of '04.</p> <p>22 A. '04, yes. That's correct.</p> <p>23 Q. And were you employed during that period of time?</p> <p>24 A. Yes.</p> <p>25 Q. Where?</p>

<p style="text-align: right;">9</p> <p>1 A. In several capacities.</p> <p>2 Q. Okay. What were they?</p> <p>3 A. Graduate assistant at Gannon University.</p> <p>4 Q. Okay.</p> <p>5 A. And self-employed in the practice of law.</p> <p>6 Q. Did you have an office or did you work out of an</p> <p>7 office?</p> <p>8 A. Primarily out of the place where I was residing.</p> <p>9 Q. Okay. Worked out of home?</p> <p>10 A. Yes.</p> <p>11 Q. What type of work were you involved in as a</p> <p>12 self-employed attorney?</p> <p>13 A. Preparing discovery requests and various contract</p> <p>14 work with other attorneys.</p> <p>15 Q. You were subcontracting with other attorneys?</p> <p>16 A. Yes.</p> <p>17 Q. And who were some of those attorneys that you were</p> <p>18 working for?</p> <p>19 A. Various firms. Ron Susmarski, primarily. But</p> <p>20 other attorneys.</p> <p>21 Q. You don't recall them?</p> <p>22 A. It's been a while.</p> <p>23 Q. Now, when you said you did your MBA, you said that</p> <p>24 was January of '03. Was that actually January of '93?</p> <p>25 A. It would have been '93, excuse me. January '93 to</p>	<p style="text-align: right;">11</p> <p>1 Campaign Committee.</p> <p>2 Q. Okay. And were you involved in any particular</p> <p>3 campaign?</p> <p>4 A. Campaign of State Senator Jane Earll. Prior to</p> <p>5 that, I was involved in her district attorney race. But</p> <p>6 that was not -- that was as a volunteer.</p> <p>7 Q. But you had a paid position with the Earll --</p> <p>8 Jane's --</p> <p>9 A. Second campaign.</p> <p>10 Q. Second campaign or senate campaign?</p> <p>11 A. Her senate campaign, yes, that's correct.</p> <p>12 Q. Now, that was her initial one, then, in --</p> <p>13 A. No, she ran for district attorney before she ran</p> <p>14 for senate.</p> <p>15 Q. Right. Okay. But it was her first campaign for</p> <p>16 senate.</p> <p>17 A. Yes.</p> <p>18 Q. All right. When was that?</p> <p>19 A. When was what?</p> <p>20 Q. The election.</p> <p>21 A. What election?</p> <p>22 Q. Where Jane Earll won the senate seat.</p> <p>23 A. That was 2004. No, 1996. I'm sorry.</p> <p>24 Q. Okay. All right. And then after that election,</p> <p>25 did you find other employment or did you continue --</p>
<p style="text-align: right;">10</p> <p>1 --</p> <p>2 Q. May of '94.</p> <p>3 A. Yes, that's correct.</p> <p>4 Q. I lost it back there.</p> <p>5 A. So did I.</p> <p>6 Q. Okay.</p> <p>7 A. It would be -- I don't know where it went.</p> <p>8 Q. So then in -- during that period of time, up to</p> <p>9 May '94, you were in school and practicing law?</p> <p>10 A. Yes. I was engaged in 12 or more graduate credits</p> <p>11 and also had responsibilities as a graduate assistant.</p> <p>12 Q. What department was that?</p> <p>13 A. The Dahlkemper School of Business.</p> <p>14 Q. And then once you got your MBA degree in May of</p> <p>15 '94, what did you do?</p> <p>16 A. I initiated a job search.</p> <p>17 Q. Okay. Did you find employment?</p> <p>18 A. No. Eventually, yes, but not initially.</p> <p>19 Q. Okay. How did you support yourself during that</p> <p>20 period of time?</p> <p>21 A. Contract work.</p> <p>22 Q. When did you find employment after May of '94?</p> <p>23 A. I began -- I continued self-employed, doing the</p> <p>24 contract work. And then became employed by the State</p> <p>25 Republican Campaign Committee. State Republican Senatorial</p>	<p style="text-align: right;">12</p> <p>1 A. Yes. In 1996 -- upon her election in 1996,</p> <p>2 Senator Earll extended to me an offer to become her chief of</p> <p>3 staff.</p> <p>4 Q. And where were you based in that job?</p> <p>5 A. Erie, with direct oversight of her office in</p> <p>6 Pittsburgh as well -- or, excuse me, Harrisburg as well.</p> <p>7 Q. Okay. You were chief of staff for both the Erie</p> <p>8 office and the Harrisburg office.</p> <p>9 A. That's correct.</p> <p>10 Q. How long did you continue in that position?</p> <p>11 A. I would say till March of 2000.</p> <p>12 Q. What did you do there?</p> <p>13 A. I accepted a position with PNC Bank.</p> <p>14 Q. Doing what?</p> <p>15 A. Municipal bond underwriting.</p> <p>16 Q. And how long did you work for PNC?</p> <p>17 A. Approximately two years.</p> <p>18 Q. During the time you were working for the State</p> <p>19 Republican Senatorial Campaign Committee or as Jane Earll's</p> <p>20 chief of staff or in the PNC position, did any of your</p> <p>21 duties involve the practice of law?</p> <p>22 A. I remained an active member of the bar.</p> <p>23 Q. Okay. But in the course of you performing your</p> <p>24 duties in those positions.</p> <p>25 A. I would say yes, in the -- for the Senator, I</p>

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<p>1 would be involved in drafting of legislation and amendments</p> <p>2 to bills, resolutions.</p> <p>3 Q. Okay.</p> <p>4 A. I consider that to be the practice of law.</p> <p>5 Q. All right.</p> <p>6 A. With PNC Bank, I would be involved in the drafting</p> <p>7 of municipal bond documents.</p> <p>8 Q. And where was that -- where were you located in</p> <p>9 that position with PNC?</p> <p>10 A. 901 State Street.</p> <p>11 Q. When you left PNC, what was your next employment?</p> <p>12 A. Gannon University.</p> <p>13 Q. What did you do there?</p> <p>14 A. I had been an adjunct professor at Gannon</p> <p>15 University. And a position opened up for me as a full-time</p> <p>16 instructor. Excuse me, associate professor is the term.</p> <p>17 Q. What did you teach?</p> <p>18 A. Business law.</p> <p>19 Q. That's all?</p> <p>20 A. I taught a various number of courses, including</p> <p>21 human resource management, which is something I taught since</p> <p>22 1998 at the University. Some areas of employment law.</p> <p>23 Q. How long were you at Gannon?</p> <p>24 A. I began as an adjunct professor in 1998. I took</p> <p>25 the position in August of 2001 as a full-time instructor.</p>	<p>1 A. Yes.</p> <p>2 Q. Where was that?</p> <p>3 A. The County of Erie.</p> <p>4 Q. When did you begin there?</p> <p>5 A. January of '02.</p> <p>6 Q. What was your position?</p> <p>7 A. County Solicitor.</p> <p>8 Q. And who was your supervisor?</p> <p>9 A. I would not characterize a supervisor. I am an</p> <p>10 appointed -- the County Solicitor is an appointed position,</p> <p>11 appointed by the County Executive. I was appointed by Rick</p> <p>12 Schenker in January of '02 to be his County Solicitor.</p> <p>13 Q. Did you participate in Mr. Schenker's campaign?</p> <p>14 A. Yes.</p> <p>15 Q. What was your role?</p> <p>16 A. I facilitated statistical work, assisted in the</p> <p>17 drafting of policy or position papers, and advised the</p> <p>18 candidate.</p> <p>19 Q. Did you have a position on his committee?</p> <p>20 A. Define position.</p> <p>21 Q. A position that would be reported on a campaign</p> <p>22 report.</p> <p>23 A. I don't believe so.</p> <p>24 Q. As a member of the committee. Okay.</p> <p>25 A. If you're asking was I the chair or treasurer, the</p>
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<p>1 Q. And when did you leave PNC?</p> <p>2 A. I stayed on at PNC as a part-time attorney till --</p> <p>3 or part-time employee, until 2002.</p> <p>4 Q. All right. Do you continue to be an associate</p> <p>5 professor at Gannon?</p> <p>6 A. Yes.</p> <p>7 Q. How many credit hours do you teach?</p> <p>8 A. 12 per semester.</p> <p>9 Q. Do you have any other -- or did you have any other</p> <p>10 employment after you left PNC in '02?</p> <p>11 A. Aside from Gannon?</p> <p>12 Q. Right.</p> <p>13 A. Occasional private clients.</p> <p>14 Q. And do you still maintain a practice of law?</p> <p>15 A. Yes.</p> <p>16 Q. And do you maintain a separate office for the</p> <p>17 practice of law?</p> <p>18 A. I am currently the vice president and general</p> <p>19 counsel of the Manufacturers Association of Northwest</p> <p>20 Pennsylvania.</p> <p>21 Q. When did you take that position?</p> <p>22 A. January of this year.</p> <p>23 Q. Okay. And between '02 and January of '06, did you</p> <p>24 have employment other than as an associate professor at</p> <p>25 Gannon and as a private practitioner?</p>	<p>1 answer is no.</p> <p>2 Q. Who was the chair of that campaign?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall who the treasurer was?</p> <p>5 A. No, I don't recall.</p> <p>6 Q. And aside from the Earll campaign and the Schenker</p> <p>7 campaign, have you participated in any other political</p> <p>8 campaigns?</p> <p>9 A. Yes.</p> <p>10 Q. What other campaigns?</p> <p>11 A. George Bush, Rick Santorum, Phil English, Michael</p> <p>12 Joyce. I'm going to ask in what capacity, because we all</p> <p>13 participate in the sense that we vote, or some of us do</p> <p>14 perhaps.</p> <p>15 Q. I would say something more than that. Where you</p> <p>16 were recognized as part of the campaign.</p> <p>17 A. Recognized by whom?</p> <p>18 Q. By the candidate.</p> <p>19 A. By the candidate. Well, then, we'll cross off</p> <p>20 George Bush from that list.</p> <p>21 Q. Or his staff. Or his appointed staff or paid</p> <p>22 staff, as somebody that was involved in the campaign.</p> <p>23 A. Michael Dunlavey. You might want to add to that</p> <p>24 list. I would say -- it would be fair to say that I</p> <p>25 participated in the election efforts of many Republicans.</p>

<p style="text-align: right;">17</p> <p>1 Q. Okay. Pretty much every year you would be 2 involved in one campaign or another? I do it too. 3 A. That would be fair to say. 4 Q. All right. 5 A. I've not seen you at any of our meetings. 6 Q. I don't tend to participate in Republican 7 campaigns for some reason. What were your duties as the 8 City Solicitor -- or the County Solicitor? Excuse me. 9 A. They are set forth in the County Charter. 10 Q. Okay. Could you just summarize those for me. 11 A. The County Solicitor is the chief legal officer of 12 the County of Erie. 13 Q. Okay. 14 A. All the duties attended thereto. Representing the 15 County in various legal matters. 16 Q. All right. And did you represent the County in 17 court cases? 18 A. On occasion. 19 Q. How many times did you do that? 20 A. I have no idea. 21 Q. Where you formally entered an appearance on behalf 22 of the County with the court. 23 A. I've done that, yes. 24 Q. Okay. You don't recall how many times? 25 A. Over the course of four years, all that I could</p>	<p style="text-align: right;">19</p> <p>1 A. Well, then. 2 Q. How often were you contacted by employees of the 3 Office of Children and Youth in the course of your duties, 4 or how often did you have contact with employees of the 5 Office of Children and Youth in the course of your duties? 6 A. Could you repeat the question. 7 Q. How frequently did you have contact with employees 8 of the Erie County Office of Children and Youth in the 9 course of your duties as County Solicitor for Erie County? 10 A. As they require. If they sought the input of the 11 County Solicitor's Office, I would be contacted. If I 12 believed that there was something of which they should be 13 aware, I would contact them. 14 Q. Okay. And the question is, how frequently did 15 that happen? 16 A. Again, it's as a doctor would prescribe a 17 medication PRN. It would be as if -- think of it this way; 18 how often do you take aspirin? You take it when you have a 19 need. 20 Q. Right. 21 A. How often would -- 22 Q. The question is, how often did the need arise? 23 Was it weekly, monthly, annually? Was it twice in the time 24 that you worked there? Was it every day? 25 A. It was not every day.</p>
<p style="text-align: right;">18</p> <p>1 give you would be a guess, and I don't want to guess. 2 Q. Okay. You can't estimate it? 3 A. No. 4 Q. More than ten or less than ten? 5 A. I would say perhaps more than ten. Again, what -- 6 how do you define a court case? Is it a -- 7 Q. Litigation filed in a court. 8 A. Well, then, Court of Common Pleas, the 9 Pennsylvania Human Relations Commission, Workers' 10 Compensation, Unemployment Compensation. 11 Q. All right. Did you represent the County in those 12 administrative tribunals that you just mentioned? 13 A. Yes. 14 Q. And on how many occasions did you do that? 15 A. Numerous. Scores. 16 Q. What is your involvement on a day-to-day basis 17 with the Office of Children and Youth? How often did you 18 have contact with the Office of Children and Youth in the 19 course of your duties as County Solicitor? 20 A. Define Office of Children and Youth. 21 Q. The Office of Children and Youth. 22 A. How do you have contact with an office? Tell me 23 the individual, and I'll tell you the contact. 24 Q. I don't know all the individuals who worked there 25 who would have contacted you.</p>	<p style="text-align: right;">20</p> <p>1 Q. Okay. 2 A. And it was more than twice. Somewhere in there. 3 Q. Okay. That's really not very responsive to my 4 question. I don't think the question is that difficult. So 5 I'm going -- 6 A. I'm not trying -- 7 Q. -- to ask it again and give you another chance to 8 answer it. 9 A. I'm not trying to be difficult. 10 Q. I'm sure. How often would you have contact with 11 employees of the Office of Children and Youth in the course 12 of performing your duties as Erie County Solicitor? 13 A. Sometimes it would be daily. Sometimes there 14 would be -- it would be less than once a month. Again, it 15 depended upon the circumstances at the time. 16 Q. In 2004, how frequently were you contacted -- or 17 how frequently were you involved with the Office of Children 18 and Youth? 19 A. I don't recall. I don't have my -- I don't 20 recall. 21 Q. Was your contact more frequent after the death of 22 Brittany Legler came to light? 23 A. I would not say so. 24 Q. So they didn't seek your advice or involvement in 25 handling any of the difficulties that arose out of that</p>



<p style="text-align: right;">21</p> <p>1 event?</p> <p>2 A. What would happen -- what happened is during</p> <p>3 meetings with Deb Liebel, the subject of the child death</p> <p>4 review would be discussed. And the fact that the District</p> <p>5 Attorney had asked not to conduct that until the criminal</p> <p>6 matter was disposed of.</p> <p>7 Q. Okay. So you were consulted on that -- holding</p> <p>8 off on the death review committee?</p> <p>9 A. Yes.</p> <p>10 Q. Aside from those issues that arose in connection</p> <p>11 with Brittany Legler's death, how often would you meet with</p> <p>12 Deb Liebel?</p> <p>13 A. During what time?</p> <p>14 Q. During the time you were County Solicitor.</p> <p>15 A. Initially, Deb Liebel -- I did not meet with her.</p> <p>16 She was not the director. She had been appointed director</p> <p>17 after Mr. Petulla left.</p> <p>18 Q. Okay. And so you didn't meet with her before she</p> <p>19 was appointed director.</p> <p>20 A. I may meet with -- I may have met with her on</p> <p>21 occasion with Mr. Petulla or as part of administrative staff</p> <p>22 meetings that were called by the then -- the then director</p> <p>23 of administration, Susan Breon.</p> <p>24 Q. On how many occasions were you contacted by the</p> <p>25 Office of Children and Youth regarding employment law</p>	<p style="text-align: right;">23</p> <p>1 with the exception of one, the one involving your client,</p> <p>2 which was withdrawn when we provided the information that</p> <p>3 showed that she had released confidential information.</p> <p>4 Q. And how many were those involving OCY in that four</p> <p>5 years?</p> <p>6 A. All of them.</p> <p>7 Q. How many is all?</p> <p>8 A. Well, I don't recall the number because, again --</p> <p>9 Q. Was it more than ten?</p> <p>10 A. OCY was the only civil service entity under the</p> <p>11 County.</p> <p>12 Q. Okay.</p> <p>13 A. So every civil service case, including the one</p> <p>14 which I believe you had a client -- do you remember the</p> <p>15 matter?</p> <p>16 Q. Um-hum. Okay. And I'm just asking you about how</p> <p>17 many there were?</p> <p>18 A. Maybe -- maybe 10 or 12. I don't recall, truly.</p> <p>19 I'm not trying to --</p> <p>20 Q. 10 or 12 civil service commission cases.</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. Again, I'm not trying to be anything but</p> <p>24 responsive.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">22</p> <p>1 issues?</p> <p>2 A. Frequently. If there were an issue regarding</p> <p>3 employment law, they would contact me.</p> <p>4 Q. And who would contact you from OCY?</p> <p>5 A. Either the director or Michael Cauley. Let me go</p> <p>6 back. When I say frequently, I meant frequently when they</p> <p>7 would have -- if they would have an issue, I would be their</p> <p>8 point of contact, not that they had many issues. There were</p> <p>9 departments that had more issues.</p> <p>10 Q. All right. How many issues do you recall being</p> <p>11 involved in during the four years you were County Solicitor?</p> <p>12 A. What type of issues?</p> <p>13 Q. Employment issues with the Office of Children and</p> <p>14 Youth.</p> <p>15 A. I'm going to say that there's attorney/client</p> <p>16 privilege on that. I will answer questions regarding your</p> <p>17 client. I'm not sure it's -- I should be speaking of</p> <p>18 matters involving other clients.</p> <p>19 Q. I'm not asking for any specifics. I'm not asking</p> <p>20 you to identify anything. I'm not asking you for any</p> <p>21 statements made by your client. I'm asking you to tell me</p> <p>22 the number of times you were involved in an employment of</p> <p>23 law issue with the Erie County Office of Children and Youth.</p> <p>24 A. Every civil service case which I handled. I</p> <p>25 handled all the civil service cases for the County of Erie</p>	<p style="text-align: right;">24</p> <p>1 A. So those would be employee matters which I would</p> <p>2 be -- in which I would be involved.</p> <p>3 Q. Okay. So over four years you handled 10 to 12</p> <p>4 cases for OCY in the -- or before the Pennsylvania Civil</p> <p>5 Service Commission; is that a fair statement?</p> <p>6 A. Yes.</p> <p>7 Q. Were you involved in any employment litigation in</p> <p>8 the Courts; either the Court of Common Pleas or the District</p> <p>9 Court, involving Office of Children and Youth employees in</p> <p>10 that four-year period? By "involved," I mean did you enter</p> <p>11 an appearance?</p> <p>12 A. No.</p> <p>13 Q. So you never went to court for the County in an</p> <p>14 employment case involving the Office of Children and Youth.</p> <p>15 A. That's correct. We have a fine insurance company.</p> <p>16 Q. On how many occasions did you enter an appearance</p> <p>17 on behalf of the County before the Pennsylvania Human</p> <p>18 Relations Commission or the Federal Equal Employment</p> <p>19 Opportunity Commission in matters involving employees of the</p> <p>20 Office of Children and Youth?</p> <p>21 A. Zero.</p> <p>22 Q. Who handled those on behalf of the County?</p> <p>23 A. There's an assumption in your question that there</p> <p>24 was.</p> <p>25 Q. I know that there were. Dave Dowes (phonetic) had</p>

<p style="text-align: right;">25</p> <p>1 one, didn't he?</p> <p>2 A. An appearance was never entered. Your question</p> <p>3 was how many times was an appearance entered. The answer is</p> <p>4 zero.</p> <p>5 Q. So there were no PHRC cases or EEOC cases filed</p> <p>6 against the County in that four year --</p> <p>7 MR. JOYAL: Involving OCY.</p> <p>8 MR. McNAIR: Involving OCY.</p> <p>9 A. That's a different question.</p> <p>10 Q. Okay. Well, then, get an answer to that one.</p> <p>11 A. One.</p> <p>12 Q. One. And who was involved in that?</p> <p>13 A. The County of Erie and David Dowes.</p> <p>14 Q. And how many unemployment compensation cases</p> <p>15 involving the Office of Children and Youth were you involved</p> <p>16 in?</p> <p>17 MR. LANE: Objection to form.</p> <p>18 Q. In the four years you were County Solicitor.</p> <p>19 MR. LANE: Same objection.</p> <p>20 MR. McNAIR: What's the matter with the form?</p> <p>21 MR. LANE: "Involved in" is a little broad.</p> <p>22 Q. Did you participate in as an attorney.</p> <p>23 A. I don't recall any for that office.</p> <p>24 Q. How many court cases involving employment law were</p> <p>25 filed against the County involving the Office of Children</p>	<p style="text-align: right;">27</p> <p>1 Q. Okay. And in general terms, how was that</p> <p>2 investigation conducted?</p> <p>3 MR. LANE: Objection to form.</p> <p>4 A. Would you define for me "general terms".</p> <p>5 Q. What was the procedure that was followed in</p> <p>6 conducting that investigation?</p> <p>7 MR. LANE: Which investigation; Abby Conley's or</p> <p>8 the other?</p> <p>9 Q. My question excluded this case, so it would be the</p> <p>10 other one. We're following the same line.</p> <p>11 A. A concern was raised. The matter was looked into</p> <p>12 and resolved.</p> <p>13 Q. Okay.</p> <p>14 A. In general terms, that's how the investigation was</p> <p>15 conducted.</p> <p>16 Q. And how was the concern brought to your attention</p> <p>17 in that case?</p> <p>18 A. I believe it was the director who raised the</p> <p>19 matter to me.</p> <p>20 Q. Okay. And who conducted the investigation?</p> <p>21 A. I asked the director what he was doing to look</p> <p>22 into it. He provided me an answer. And I was satisfied.</p> <p>23 The director at the time was John Petulla.</p> <p>24 Q. Was any action taken as a result of the findings</p> <p>25 of that investigation?</p>
<p style="text-align: right;">26</p> <p>1 and Youth during the four years that you were County</p> <p>2 Solicitor?</p> <p>3 A. When you say Court cases, do you include --</p> <p>4 Q. I mean Common Pleas or Federal District Court.</p> <p>5 A. I believe your client was the only one.</p> <p>6 Q. And aside from the case that we're here about,</p> <p>7 during those four years, how many times did you participate</p> <p>8 or supervise an investigation of allegations of wrongdoing</p> <p>9 against an employee of the Office of Children and Youth?</p> <p>10 MR. LANE: Object to the form of the question.</p> <p>11 MR. McNAIR: What's wrong with the form of the</p> <p>12 question?</p> <p>13 MR. LANE: "Allegation of wrongdoing" is overly</p> <p>14 broad and ambiguous. Could you read the question</p> <p>15 back again.</p> <p>16 (Record read by reporter.)</p> <p>17 MR. LANE: "Wrongdoing" also requires a legal</p> <p>18 conclusion to, in the event that you're --</p> <p>19 MR. McNAIR: I said allegations of wrongdoing.</p> <p>20 MR. LANE: Still requires a legal conclusion.</p> <p>21 Also "investigation" is overly broad.</p> <p>22 MR. McNAIR: Okay. Would you please answer the</p> <p>23 question.</p> <p>24 A. To the best of my recollection, two, including</p> <p>25 your client. So one other than your client.</p>	<p style="text-align: right;">28</p> <p>1 A. I don't believe so.</p> <p>2 Q. Do you know if Mr. Petulla interviewed any</p> <p>3 witnesses or people with knowledge of the facts of the</p> <p>4 allegations involved in that investigation?</p> <p>5 A. I was satisfied that Mr. Petulla had done his due</p> <p>6 diligence and that the department had done.</p> <p>7 Q. And did you independently investigate any of the</p> <p>8 allegations?</p> <p>9 A. No.</p> <p>10 Q. Did you speak to any of the witnesses or the</p> <p>11 employee involved?</p> <p>12 A. No.</p> <p>13 Q. Did you speak to the supervisor of the employee</p> <p>14 involved or anyone other than the director?</p> <p>15 A. No.</p> <p>16 Q. Do you know my client, Abby Conley?</p> <p>17 A. The first time I met her was the day of her</p> <p>18 resignation.</p> <p>19 Q. Were you aware of who she was, who she is?</p> <p>20 A. Yes.</p> <p>21 Q. How did you become aware of who she is?</p> <p>22 A. I remember her as the individual who -- from</p> <p>23 various -- I was aware of her as her membership -- or,</p> <p>24 rather, her holding the position of Erie City School</p> <p>25 District Director. I remember well her trademark, ABC</p>



<p style="text-align: right;">29</p> <p>1 blocks for -- what was the motto for her election. I also  2 know that she was the individual who collected in excess  3 of -- or coordinated the collection of in excess of well  4 over 10,000 signatures, I believe, to not have the library  5 placed on the Bayfront. And I believe I also knew that -- I  6 was aware of the name.  7 Q. Okay. In 2003 or 2004, to your knowledge, was  8 Ms. Conley involved in any petition drives or running for  9 any public office?  10 A. No, not that I'm aware.  11 Q. And prior to September 10, 2004, are you aware  12 that Ms. Conley made any effort to be involved in any debate  13 over issues affecting the general public?  14 A. Not that I recall.  15 Q. During that period of time, are you aware of any  16 efforts that Ms. Conley made to seek publicity for herself  17 for any purpose?  18 A. Not that I'm aware.  19 Q. Did you know what political party Ms. Conley is  20 affiliated with?  21 A. Could you rephrase your question. When, I guess  22 is the -- I knew that she was a Democrat when she was a  23 member of the School District -- the School Board. I was  24 not aware of her political party affiliation, you know,  25 aside from that. I don't know if she's changed parties or</p>	<p style="text-align: right;">31</p> <p>1 Q. Okay. Did he advise you of any other motivation  2 other than his concern over Ms. Conley's testimony in that  3 hearing of July 28th?  4 A. His concerns were Abby's testimony and the  5 credibility of the department.  6 Q. Okay. What was his concern regarding Ms. Conley's  7 testimony?  8 A. That she had provided Attorney Villella a draft  9 copy of a document.  10 Q. Okay.  11 A. Prior to her testimony.  12 Q. Do you know whether or not that allegation is  13 true?  14 A. I read the transcript and a draft copy of the  15 document which was provided to Attorney Villella. I do not  16 know who provided it.  17 Q. You couldn't determine that by reading the  18 transcript?  19 A. The transcript speaks for itself.  20 Q. I know. And you couldn't determine whether or not  21 Mr. Villella possessed that document prior to the hearing by  22 reading the transcript?  23 A. If you show me the transcript, we could work  24 through the testimony provided and come to the conclusion  25 based upon what is written there.</p>
<p style="text-align: right;">30</p> <p>1 not.  2 Q. And your first knowledge that Ms. Conley worked at  3 the Office of Children and Youth was when?  4 A. When Michael Cauley told me that he had an  5 occurrence with her as a witness in a case.  6 Q. When was that, in relation to that hearing? If it  7 refreshes your recollection, that hearing was on Friday  8 July 28th, 2004.  9 A. I would say it was, if not that day, then the  10 Monday. I would believe, actually, it was the Monday.  11 Q. How did Mr. Cauley approach you about this issue?  12 A. It was the -- I remember it being the summer.  13 What date did you say it was, again?  14 Q. The hearing was July 28th.  15 A. So I remember Mr. -- I remember it being the  16 summer, because when Gannon was on summer break, I was at  17 the County 8:30 to 4:30. And he came into my office and  18 told me what happened.  19 Q. What did he tell you had happened?  20 A. He outlined for me what happened to Ms. Conley  21 while she was on the stand.  22 Q. Okay. Was there any other motivation for him  23 approaching you other than the events of that hearing of  24 July 28th?  25 A. You'd have to talk to him.</p>	<p style="text-align: right;">32</p> <p>1 Q. Okay. Is that an exercise that you previously  2 performed?  3 A. I've read the transcript.  4 Q. Okay. Did you read the transcript with a view  5 toward determining whether or not it gave an indication that  6 Ms. Conley provided a draft of a document to Mr. Villella  7 prior to the commencement of the hearing of July 28, 2004?  8 A. I read the transcript to ascertain what happened  9 in the courtroom on that date. I was not reading  10 specifically to find an occurrence or a nonoccurrence of an  11 event, but rather to come to an understanding of what  12 occurred in that courtroom on that date.  13 Q. When did you read that transcript for the first  14 time?  15 A. I do not recall. But it was prior to the  16 resignation of your client from employment with the County  17 of Erie.  18 Q. So it was sometime between that Monday, would have  19 been August 31st, and September 10th.  20 A. That's correct.  21 Q. All right. Was Mr. Cauley concerned that  22 Ms. Conley had given testimony that was not truthful?  23 A. Mr. Cauley's concern was that Ms. Conley had acted  24 inappropriately. And the larger overreaching concern was  25 for the credibility of the department in the eyes of Judge</p>

<p style="text-align: right;">33</p> <p>1 Kelly.</p> <p>2 Q. Okay. In what way did Mr. Cauley -- aside from</p> <p>3 allegedly giving this document to Mr. Villella, in what way</p> <p>4 did Ms. Conley act inappropriately, according to Mr. Cauley?</p> <p>5 A. Your question set aside from, I believe that that</p> <p>6 is in and of itself enough, if that, indeed, is what</p> <p>7 occurred.</p> <p>8 Q. Okay. And aside from that, or was that the only</p> <p>9 concern?</p> <p>10 A. I don't recall any other concerns.</p> <p>11 Q. So if I understand correctly, your testimony is</p> <p>12 that on that Monday Mr. Cauley approached you in your office</p> <p>13 with a concern regarding Abby Conley's testimony at the</p> <p>14 July 28th hearing alleging that she had provided a document</p> <p>15 to Jerry Villella, and that this impacted the credibility of</p> <p>16 the agency with Judge Kelly. Is that a fair --</p> <p>17 A. Yes.</p> <p>18 Q. -- summary of your testimony?</p> <p>19 A. I believe so. That is a fair -- yes.</p> <p>20 Q. Okay. Did Mr. Cauley express any concerns to you</p> <p>21 that he or others at the agency believed that Ms. Conley was</p> <p>22 leaking other information?</p> <p>23 A. I don't recall anything, other than the concern</p> <p>24 for the draft of the report going to Attorney Villella. Or</p> <p>25 rather Attorney Villella obtaining a copy inappropriately of</p>	<p style="text-align: right;">35</p> <p>1 law, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you teach employment personnel issues,</p> <p>4 correct?</p> <p>5 A. That's correct, yes.</p> <p>6 Q. And you would agree with me, would you not, that</p> <p>7 if you're going to undertake an investigation to determine</p> <p>8 whether or not an employee should be subjected to</p> <p>9 discipline, that investigation should be objective and</p> <p>10 unbiased? Would you agree with me?</p> <p>11 MR. JOYAL: I'm going to object to the form.</p> <p>12 That's presuming that there was an investigation</p> <p>13 he was conducting on July 31st.</p> <p>14 MR. LANE: I'm going to join in that and also</p> <p>15 object to the form.</p> <p>16 A. I would not say that we began an investigation.</p> <p>17 Mike spoke to me. He had a concern. I responded. I</p> <p>18 listened to the concern. And we discussed what to do with</p> <p>19 the concern. The main concern which he had was the fact</p> <p>20 that Judge Kelly heard many of these cases, and making sure</p> <p>21 that Judge Kelly held the department in proper esteem.</p> <p>22 Q. Okay. Was there a discussion of requiring OCY</p> <p>23 employees to testify to the party line, whatever the</p> <p>24 decision was that OCY management had made in a particular</p> <p>25 case?</p>
<p style="text-align: right;">34</p> <p>1 that draft, and the credibility of the department.</p> <p>2 Q. Did Mr. Cauley tell you whether or not he had</p> <p>3 discussed this issue with Mr. Villella, to find out if or</p> <p>4 where he had gotten the document in question?</p> <p>5 A. At what time?</p> <p>6 Q. Any time.</p> <p>7 A. I know that --</p> <p>8 Q. Specifically in this meeting, I guess this Monday,</p> <p>9 August 31st meeting?</p> <p>10 MR. LANE: Is it August 31st or July 31st?</p> <p>11 MR. McNAIR: Or July 31st, excuse me. Thank you.</p> <p>12 MR. LANE: Because I think you used August 31st</p> <p>13 before too.</p> <p>14 MR. McNAIR: Yeah. I meant July 31st.</p> <p>15 THE WITNESS: I'm terrible with dates.</p> <p>16 Q. I'm making it up as I go along, obviously.</p> <p>17 A. It's okay. I'm not surprised.</p> <p>18 Q. Thanks. Did he tell you in that meeting on</p> <p>19 July 31st if he spoke to Mr. Villella and asked him where he</p> <p>20 got that document?</p> <p>21 A. I don't recall.</p> <p>22 Q. Would that have been an appropriate manner of</p> <p>23 investigating this allegation?</p> <p>24 A. I don't know what you mean by "appropriate".</p> <p>25 Q. Well, you're a professor and you teach employment</p>	<p style="text-align: right;">36</p> <p>1 A. Attorney Cauley -- I would not characterize</p> <p>2 testimony as party line. All that we ever ask of any County</p> <p>3 employee to do when they're on the stand is tell the truth.</p> <p>4 Q. Okay. And do you know whether or not Ms. Conley</p> <p>5 told the truth on July 28th?</p> <p>6 A. You would have to ask her.</p> <p>7 Q. I'm asking you whether or not you know whether she</p> <p>8 did or not.</p> <p>9 MR. JOYAL: I'm going to object to the form.</p> <p>10 Again, it asks for him to decide for himself what</p> <p>11 Abby Conley said during the course of her</p> <p>12 testimony in all instances was true or false.</p> <p>13 MR. McNAIR: I'm aware of the question.</p> <p>14 A. I do not believe that I'm in a position to judge</p> <p>15 the veracity of Ms. Conley's statements on that day.</p> <p>16 Q. So as you sit here today, you can't tell us</p> <p>17 whether or not Abby Conley's testimony on July 28th, 2004</p> <p>18 was truthful or not.</p> <p>19 MR. LANE: Objection to form.</p> <p>20 A. It was what it was. Whether it's true or not, I</p> <p>21 cannot make that determination.</p> <p>22 Q. So you're not alleging that Ms. Conley made any</p> <p>23 untruthful statement in the course of that testimony.</p> <p>24 A. I cannot state that her testimony was either true</p> <p>25 or untrue. I can only state that it was.</p>

<p style="text-align: right;">37</p> <p>1 Q. Did you, yourself, undertake -- or take any</p> <p>2 efforts to find out how Mr. Villella obtained this document</p> <p>3 or if he did?</p> <p>4 A. If he did. The transcript shows, I believe, that</p> <p>5 he had possession of it. So he did have it. I believe.</p> <p>6 Did I undertake; no.</p> <p>7 Q. Okay. And your interpretation of the transcript</p> <p>8 is that Mr. Villella had possession of that document prior</p> <p>9 to the beginning of the hearing.</p> <p>10 A. I don't have the transcript. If you have the</p> <p>11 transcript -- the transcript will speak for itself. I don't</p> <p>12 know if he had it before the hearing, during the hearing, or</p> <p>13 at what time. However, at one point he had possession</p> <p>14 because he approached Ms. Conley on the stand with the</p> <p>15 document.</p> <p>16 Q. All right. Well, the question was whether or not</p> <p>17 you did anything yourself to investigate Mr. Cauley's</p> <p>18 allegation.</p> <p>19 A. I suggested to Mike that we check the e-mails of</p> <p>20 Ms. Conley.</p> <p>21 Q. Okay. And you were the person that first brought</p> <p>22 up the subject of checking her e-mails?</p> <p>23 A. I believe Mike came to me. And as a result of</p> <p>24 that meeting, I knew what our computer-use policy was, and</p> <p>25 that we would be able to do this. So I believe I suggested</p>	<p style="text-align: right;">39</p> <p>1 A. The look was at all of the e-mail.</p> <p>2 Q. Why did you feel the need to look at all of the</p> <p>3 e-mails to investigate a specific allegation concerning</p> <p>4 Jerry Villella?</p> <p>5 A. Because oftentimes information does not go</p> <p>6 directly to the recipient, but could perhaps go to a third</p> <p>7 party. The question here was whether or not this individual</p> <p>8 had released information to third parties.</p> <p>9 Q. Was there any discussion of the contents of</p> <p>10 Ms. Conley's personnel file in the course of this meeting</p> <p>11 with Mr. Cauley?</p> <p>12 A. No. I have not -- I had not -- no. I don't</p> <p>13 believe I ever saw Ms. Conley's personnel file.</p> <p>14 Q. How long did this meeting last?</p> <p>15 A. I don't recall. I don't believe it took more than</p> <p>16 20 minutes.</p> <p>17 Q. And at the conclusion of this meeting, what was</p> <p>18 the resolution? What did you instruct Mr. Cauley to do, if</p> <p>19 anything?</p> <p>20 A. I suggested -- I don't believe I instructed</p> <p>21 Michael to do anything. Rather, it was discussed that we</p> <p>22 had the right to look at any e-mail, County e-mails. This</p> <p>23 is County property. Under our policies, we have the ability</p> <p>24 to do that. I suggested that he contact individuals at BAC</p> <p>25 Computer to facilitate this.</p>
<p style="text-align: right;">38</p> <p>1 it to Mike.</p> <p>2 Q. Okay. So that suggestion came from you. That</p> <p>3 wasn't something that OCY asked you for.</p> <p>4 A. I think that -- I'm not sure that -- I wanted to</p> <p>5 assist Mike in understanding his concern. And, certainly,</p> <p>6 if an individual was submitting information, privileged</p> <p>7 information, to third parties, we wanted to know about it.</p> <p>8 Q. Okay. And you had assumed that she had done this</p> <p>9 via e-mail. That she would have e-mailed this to</p> <p>10 Mr. Villella?</p> <p>11 A. There was no assumption of that sort. Rather,</p> <p>12 this was the first place to look.</p> <p>13 Q. Okay. What made you believe that looking at</p> <p>14 Abby's e-mails would lead to evidence concerning</p> <p>15 Mr. Cauley's allegation that she gave a document to Mr.</p> <p>16 Villella?</p> <p>17 A. The document, as my understanding, was created</p> <p>18 or -- created or maintained on Abby's system, computer. And</p> <p>19 at some point it ended up in Mr. Villella's possession. If</p> <p>20 through a check of her e-mail, it could be determined that</p> <p>21 he -- it was e-mailed to him.</p> <p>22 Q. Okay. So that's why you restricted the search for</p> <p>23 e-mails from Abby to Jerry Villella.</p> <p>24 A. No.</p> <p>25 MR. LANE: Objection to form.</p>	<p style="text-align: right;">40</p> <p>1 Q. Were you involved in any subsequent meetings</p> <p>2 concerning this issue, prior to September 10th?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What was the next time you were -- met with</p> <p>5 anybody from OCY concerning this -- concerning Abby Conley?</p> <p>6 A. Shortly after I authorized -- or shortly after I</p> <p>7 spoke with Michael about the review of Ms. Conley's e-mail,</p> <p>8 I met with Mike to discuss the contents of what he had</p> <p>9 found.</p> <p>10 Q. Did you ever meet with anyone from OCY other than</p> <p>11 Mr. Cauley?</p> <p>12 A. Yes.</p> <p>13 Q. Who was that?</p> <p>14 A. The director.</p> <p>15 Q. And who is the director?</p> <p>16 A. Deb Liebel.</p> <p>17 Q. When did you meet with Deb Liebel?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall where you met with her?</p> <p>20 A. I would say in the courthouse.</p> <p>21 Q. Do you have any recollection of that meeting?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Who was present?</p> <p>24 A. Perhaps -- certainly, Deb, myself, Michael. At</p> <p>25 some point, Pete Callan was engaged.</p>

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<p>1 Q. And do you recall when this meeting took place?</p> <p>2 A. No.</p> <p>3 Q. Was anyone else present besides the people you've</p> <p>4 named?</p> <p>5 A. I believe Ann Bloxdorf may or may not have been</p> <p>6 present. I know that she would have been informed.</p> <p>7 Q. And from OCY, were Mr. Cauley and Ms. Liebel the</p> <p>8 only participants?</p> <p>9 A. Yes.</p> <p>10 Q. How long did this meeting last?</p> <p>11 A. It was -- we met -- I met with Mike initially</p> <p>12 to -- when he told me the content of the e-mails that he had</p> <p>13 found, then there was a greater meeting that was established</p> <p>14 with those participants.</p> <p>15 Q. Okay. And, again, do you recall when that was?</p> <p>16 A. No.</p> <p>17 Q. Was it about a week?</p> <p>18 A. If you're looking for the chronology, Mike met</p> <p>19 with me. I suggested to Mike the e-mails should be looked</p> <p>20 at. Make sure you talk to Deb about it, and tell Deb that</p> <p>21 that's what we're doing. The e-mails were reviewed. Mike</p> <p>22 told me some of what he found. I said, we better get</p> <p>23 everybody -- we should get everyone together, and we did.</p> <p>24 Q. So that meeting that you're talking about occurred</p> <p>25 after Mr. Cauley had reviewed these e-mails.</p>	<p>1 rights are preserved. That's all you need to do.</p> <p>2 You don't need to suggest an answer to the</p> <p>3 witness. You don't need to give an explanation.</p> <p>4 You may simply object, and your rights are</p> <p>5 preserved. Thank you.</p> <p>6 MR. JOYAL: Mr. McNair, this is Federal Court, Mr.</p> <p>7 McNair. Don't lecture me. Don't even try. He's</p> <p>8 never classified it as an investigation that he</p> <p>9 participated in.</p> <p>10 MR. McNAIR: I have. Let's go off the record.</p> <p>11 I'm not going to pay for this.</p> <p>12 MR. JOYAL: You haven't paid for anything yet,</p> <p>13 Tim. That's my objection, as to form of the</p> <p>14 question.</p> <p>15 MR. McNAIR: This is off the record. I'm not</p> <p>16 putting --</p> <p>17 MR. JOYAL: You can't stop something from going on</p> <p>18 the record.</p> <p>19 THE REPORTER: If you're going to go off, I would</p> <p>20 like you all to agree to go off.</p> <p>21 MR. McNAIR: If I tell you we're off, we're off.</p> <p>22 MR. JOYAL: I don't believe so, Mr. McNair. The</p> <p>23 record is the record. You can't unilaterally go</p> <p>24 off the record.</p> <p>25 MR. McNAIR: Look, I'm sick and tired of listening</p>
42	44
<p>1 A. Yes. That's my recollection.</p> <p>2 Q. And what was the topic of discussion at that</p> <p>3 meeting?</p> <p>4 A. The result of what had been found.</p> <p>5 Q. What were you told had been found?</p> <p>6 A. That your client had dispensed information to a</p> <p>7 former caseworker, a resident of North Carolina, regarding</p> <p>8 an order of court that a child should be taken from its</p> <p>9 birth mother upon the birth of the child. And that this</p> <p>10 revelation was done with intent that the mother should</p> <p>11 receive it and act upon it.</p> <p>12 Q. And can you explain to me how or if that ties into</p> <p>13 an allegation that Ms. Conley provided Mr. Villella with a</p> <p>14 document prior to the July 28th hearing. Was there any</p> <p>15 discussion of that document in this e-mail?</p> <p>16 MR. LANE: Objection to form.</p> <p>17 MR. JOYAL: Objection to form. You keep talking</p> <p>18 about an investigation about a document. And I</p> <p>19 don't think he's ever, again --</p> <p>20 MR. McNAIR: Well, look, his testimony speaks for</p> <p>21 itself. Mr. Joyal, stop with the lectures. I</p> <p>22 don't have time. This witness doesn't have time.</p> <p>23 You're just lengthening this. I have depositions</p> <p>24 with page after page of you going on. I</p> <p>25 understand you object to the question. Your</p>	<p>1 to your speeches. Please cut it out. Act</p> <p>2 professional. Make an objection. Your rights are</p> <p>3 preserved. If I need an explanation, I'll ask for</p> <p>4 an explanation.</p> <p>5 MR. JOYAL: Mr. McNair, learn the rules.</p> <p>6 MR. McNAIR: Don't lecture me on the rules.</p> <p>7 MR. JOYAL: The objection is on the record,</p> <p>8 according to the rules of civil procedure and the</p> <p>9 rules of court.</p> <p>10 MR. McNAIR: The record's on the objection [sic]</p> <p>11 according to the rules of Ed Joyal. Okay. Can</p> <p>12 you read back my question, please.</p> <p>13 MR. JOYAL: We're done, Mr. McNair. If you had</p> <p>14 not decided to go for four minutes about talking</p> <p>15 about my objection, we would be done.</p> <p>16 MR. McNAIR: Would you read back the question,</p> <p>17 please.</p> <p>18 (Record read by reporter.)</p> <p>19 MR. LANE: Objection to form.</p> <p>20 MR. McNAIR: You've already made it.</p> <p>21 A. I don't understand the question.</p> <p>22 Q. Was there any connection between this e-mail that</p> <p>23 you've described, to this former caseworker, and</p> <p>24 Mr. Cauley's allegation that Ms. Conley had improperly</p> <p>25 provided Mr. Villella with a draft document?</p>



<p style="text-align: right;">45</p> <p>1 A. My understanding of the e-mails that were reviewed</p> <p>2 unearthed something far more disturbing than what happened</p> <p>3 in that courtroom. It showed that your client had --</p> <p>4 Q. This is not responsive to the question. Okay.</p> <p>5 A. If you don't like the response, that's your issue.</p> <p>6 Q. It's not responsive to the question.</p> <p>7 A. I believe I'm responding to the question.</p> <p>8 MR. LANE: You can finish your answer. Finish</p> <p>9 your answer.</p> <p>10 MR. McNAIR: Make your speech.</p> <p>11 Q. I'll ask the question again. And we'll do this --</p> <p>12 and if you have to come back, we'll do it again.</p> <p>13 A. What was found was something very disturbing.</p> <p>14 Q. That you would agree with me, however disturbing</p> <p>15 it was, it was completely unrelated to the issue that</p> <p>16 Mr. Cauley approached you with on Monday, July 31st.</p> <p>17 A. Was it related? What was found was what was</p> <p>18 found. What was found was that your client had told a third</p> <p>19 party that a child would be taken from its mother at birth,</p> <p>20 something that mother should not have been aware of, with</p> <p>21 intent that that mother be informed.</p> <p>22 Q. What makes you think the mother wasn't aware of</p> <p>23 this?</p> <p>24 A. It's something that of which the mother -- the</p> <p>25 court does not inform the person. I do not practice in this</p>	<p style="text-align: right;">47</p> <p>1 somewhat remote in time, wouldn't you?</p> <p>2 MR. LANE: Objection to form.</p> <p>3 A. What is remote?</p> <p>4 Q. May. You were doing this investigation in August.</p> <p>5 A. It was unacceptable behavior and a breach of</p> <p>6 confidentiality.</p> <p>7 Q. Do you know whether or not the employee was</p> <p>8 previously counseled about such behavior prior to</p> <p>9 Mr. Cauley's investigation?</p> <p>10 A. I do not know.</p> <p>11 Q. Would that have made any difference to you?</p> <p>12 A. I only know -- it would not -- the County of</p> <p>13 Erie -- as County Solicitor, I cannot tolerate behavior of</p> <p>14 Ms. Conley's type. So it would not have made any</p> <p>15 difference.</p> <p>16 Q. Okay. So the fact that she was told not to do it,</p> <p>17 and thereafter didn't do it, did not make any difference to</p> <p>18 you in this matter.</p> <p>19 MR. LANE: Objection to form.</p> <p>20 A. What do you mean by -- I don't understand the</p> <p>21 question.</p> <p>22 Q. Okay. There was an e-mail. Subsequently, there</p> <p>23 was a counseling, in violation of the union contract, but</p> <p>24 counseling nonetheless, where Ms. Conley was told to not</p> <p>25 disclose or e-mail information concerning the agency. And</p>
<p style="text-align: right;">46</p> <p>1 area of law. Michael Cauley, who has spent the better part</p> <p>2 of his professional life in this area, informed me that it</p> <p>3 is the general rule that these orders are issued, given to</p> <p>4 the area hospitals. And the mother is not informed because</p> <p>5 of fear of flight of the mother or that the mother would</p> <p>6 injure the baby.</p> <p>7 Q. Okay. I understand that. Did you review the OCY</p> <p>8 file in that case?</p> <p>9 A. No.</p> <p>10 Q. Do you know whether or not that file indicates</p> <p>11 that the mother was fully aware of the existence of that</p> <p>12 order?</p> <p>13 A. That's not relevant. What is relevant is that a</p> <p>14 third party was informed of a matter, and that is</p> <p>15 unacceptable.</p> <p>16 Q. Whether it was relevant or not, are you aware of</p> <p>17 whether or not that mother had knowledge that such an order</p> <p>18 would be entered?</p> <p>19 A. You would have to speak to that mother. I don't</p> <p>20 know whether she was aware or not.</p> <p>21 Q. And you didn't do that.</p> <p>22 A. It was not warranted. We found that your client</p> <p>23 had told a third party of a matter involving a client.</p> <p>24 Q. And there was a different client, and it was a</p> <p>25 different case. And you would agree with me, it was</p>	<p style="text-align: right;">48</p> <p>1 that thereafter there's no evidence that she did. Now,</p> <p>2 would that initial e-mail still, in your mind, constitute</p> <p>3 grounds for termination even after it's been dealt with by</p> <p>4 the employee's supervisor?</p> <p>5 MR. LANE: Objection to form.</p> <p>6 A. I believe that what she did constituted grounds</p> <p>7 for termination.</p> <p>8 Q. Regardless of the fact that she had been warned</p> <p>9 and heeded the warning.</p> <p>10 MR. LANE: Objection to form. Lack of foundation.</p> <p>11 MR. McNAIR: Come on.</p> <p>12 MR. LANE: Come on what?</p> <p>13 MR. McNAIR: There's foundation.</p> <p>14 MR. LANE: She is warned about that particular</p> <p>15 instance of conduct; is that what you're saying?</p> <p>16 That's a misrepresentation.</p> <p>17 MR. JOYAL: It's an outright lie, as a matter of</p> <p>18 fact.</p> <p>19 A. What she did was grounds for termination. She</p> <p>20 informed a third party of the existence of a detention</p> <p>21 order.</p> <p>22 Q. And what makes you think that Ms. Conley -- how</p> <p>23 would Ms. Conley know about that detention order?</p> <p>24 A. You would have to ask her.</p> <p>25 Q. I'm asking you.</p>

<p style="text-align: right;">49</p> <p>1 A. I don't know the operations of that department. I</p> <p>2 have no basis upon which to answer your question.</p> <p>3 Q. All right. Was this particular e-mail something</p> <p>4 that you were specifically looking for in your investigation</p> <p>5 of Ms. Conley's allegedly providing a document to</p> <p>6 Mr. Villella?</p> <p>7 MR. LANE: Objection to form.</p> <p>8 A. I was not looking for anything. When you say</p> <p>9 her -- I suggested that her e-mails should be reviewed.</p> <p>10 Q. Okay. And all of her e-mails, not just ones that</p> <p>11 were relevant to the allegation.</p> <p>12 A. Yes.</p> <p>13 Q. And was that done in the hopes that something</p> <p>14 would turn up that would provide grounds for discipline,</p> <p>15 aside from what Mr. Cauley alleged?</p> <p>16 MR. LANE: Objection to form.</p> <p>17 A. No one hopes to discipline anyone. It was to come</p> <p>18 to an understanding of the actions of this employee.</p> <p>19 Q. So this wasn't done with a view toward</p> <p>20 disciplinary action.</p> <p>21 A. It was done with an understanding -- to come to an</p> <p>22 understanding of the actions of the employee while acting</p> <p>23 within the course and scope of her employment.</p> <p>24 Q. And did the review of those e-mails enhance your</p> <p>25 understanding of whether or not Abby provided any document</p>	<p style="text-align: right;">51</p> <p>1 Q. Now, just so I'm very clear on this. The idea of</p> <p>2 snooping through Abby's e-mails was raised by you rather</p> <p>3 than anybody at OCY?</p> <p>4 MR. LANE: Objection to form.</p> <p>5 MR. JOYAL: Objection to form.</p> <p>6 MR. DEVLIN: Objection to form.</p> <p>7 A. First of all, those are County e-mails. They are</p> <p>8 our property. We have a right to inspect our property at</p> <p>9 any time. Snooping is an inappropriate characterization of</p> <p>10 the activities which we conducted. Second, I believe that I</p> <p>11 raised -- I suggested it as the appropriate way to</p> <p>12 understand the actions of this employee.</p> <p>13 Q. Okay. And the question was, was it your idea or</p> <p>14 somebody else's idea?</p> <p>15 MR. LANE: Objection to form, and lack of</p> <p>16 foundation.</p> <p>17 A. I believe it was -- I believe that I suggested --</p> <p>18 or if I did not suggest, then I certainly agreed with the</p> <p>19 idea of looking through --</p> <p>20 Q. So you don't know whose idea it was.</p> <p>21 A. I believe it was -- I believe it was mine, but I</p> <p>22 cannot state entirely.</p> <p>23 Q. Okay.</p> <p>24 A. If you're asking me, did Michael Cauley, frothing</p> <p>25 from the mouth, come to me and say I want to look through</p>
<p style="text-align: right;">50</p> <p>1 to Mr. Villella?</p> <p>2 A. It did not resolve the issue. It is unknown how</p> <p>3 it got from Abby to Attorney Villella.</p> <p>4 Q. Were you concerned at all about Mr. Cauley's</p> <p>5 objectivity in this investigation?</p> <p>6 A. No.</p> <p>7 Q. Why not?</p> <p>8 A. Mike Cauley has been an assistant public defender</p> <p>9 and member of the bar and the solicitor for the Office of</p> <p>10 Children and Youth in either a contract capacity or as an</p> <p>11 employment -- employment capacity. He replaced, I believe,</p> <p>12 Beveridge -- not Beveridge. I forget the attorney who --</p> <p>13 Q. I think it was Jim Blackwood.</p> <p>14 A. Blackwood. In addition, I believe Michael Cauley</p> <p>15 to be an honorable man and able to conduct this review.</p> <p>16 Q. Okay. Did Mr. Cauley express any anger to you in</p> <p>17 that meeting about what had happened at that hearing of</p> <p>18 July 28th?</p> <p>19 A. His presentation to me was factual.</p> <p>20 Q. Okay. So you never thought that Mr. Cauley might</p> <p>21 be looking for retribution against Ms. Conley for</p> <p>22 frustrating the department's goal in that particular</p> <p>23 dependency case?</p> <p>24 A. No. In fact, I think his presentation to me was</p> <p>25 factual and void of emotion.</p>	<p style="text-align: right;">52</p> <p>1 this woman's e-mails, I don't believe that was it.</p> <p>2 Q. I'm not asking you that.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. And no effort was made to narrow the scope</p> <p>5 of the search to make it relevant to the specific issue that</p> <p>6 Mr. Cauley raised.</p> <p>7 MR. DEVLIN: Objection to form.</p> <p>8 MR. LANE: Objection to form.</p> <p>9 A. The idea was to come to an understanding of the</p> <p>10 actions of the employee. One achieves that by looking at</p> <p>11 all of the actions.</p> <p>12 Q. So the answer to my question is that it is true</p> <p>13 that no effort was made to narrow the scope of the search to</p> <p>14 relate only to the issue that Mr. Cauley was concerned</p> <p>15 about.</p> <p>16 MR. LANE: Objection to form.</p> <p>17 A. I'm sorry.</p> <p>18 Q. Would you answer the question.</p> <p>19 A. We reviewed her e-mails to come to an</p> <p>20 understanding of how this document may have gotten to</p> <p>21 Attorney Villella. When the e-mails were reviewed,</p> <p>22 something far more disturbing was found.</p> <p>23 Q. Strictly by accident; is that what you're trying</p> <p>24 to tell us?</p> <p>25 A. What do you mean, "strictly by accident"? It</p>



<p style="text-align: right;">53</p> <p>1 happened to be on her e-mails. I'm sure it was accidental,</p> <p>2 and that she probably wishes she had removed it.</p> <p>3 Q. Okay. But that's not something you were looking</p> <p>4 for.</p> <p>5 A. No, it's not what we were looking for.</p> <p>6 Q. But it sure came in handy.</p> <p>7 MR. JOYAL: Objection to form.</p> <p>8 MR. LANE: Objection to form. That's not a</p> <p>9 question. Don't answer, because it's not a</p> <p>10 question.</p> <p>11 Q. Would you regard it as fortunate that that e-mail</p> <p>12 was found?</p> <p>13 A. I consider it very unfortunate.</p> <p>14 Q. Unfortunate.</p> <p>15 A. Yes. It's unfortunate when a County employee does</p> <p>16 something like Ms. Conley does. It's also unfortunate to</p> <p>17 have to terminate someone.</p> <p>18 Q. Was there any discussion in either of these</p> <p>19 meetings, either the one with Mr. Cauley or the one with</p> <p>20 Ms. Liebel, of an allegation that Abby had filed a report of</p> <p>21 suspected child abuse against an OCY caseworker.</p> <p>22 A. I believe the matter may have been discussed.</p> <p>23 However, I suggested to Mike that he formalize his concerns</p> <p>24 in a report to me.</p> <p>25 Q. When did you suggest that?</p>	<p style="text-align: right;">55</p> <p>1 A. No.</p> <p>2 Q. Is there any policy or are there any standards</p> <p>3 governing when the County will review an employee's e-mails,</p> <p>4 as was done with Ms. Conley?</p> <p>5 A. We have a computer use policy, which I believe</p> <p>6 we've supplied.</p> <p>7 Q. Right. And the computer use policy says that you</p> <p>8 can do it. It doesn't set forth any standards about when</p> <p>9 that will be done. Is there any standard, or is that</p> <p>10 something that is done in the unbridled discretion of the</p> <p>11 County Solicitor?</p> <p>12 MR. LANE: Objection to form.</p> <p>13 A. I only know of this occurrence, being the only</p> <p>14 time at which an individual's e-mails have been looked at.</p> <p>15 Q. Okay.</p> <p>16 A. My concern with using BAC was that they were an</p> <p>17 independent contractor who had provided service to the</p> <p>18 County. And I believe that if we needed to account for how</p> <p>19 we did this, I would rather we do it through someone who was</p> <p>20 not a County employee.</p> <p>21 Q. Okay.</p> <p>22 A. And had the technical expertise.</p> <p>23 Q. And so there was no policy, no internal policy in</p> <p>24 place in the administration of the County that gave any</p> <p>25 standards for when such an effort and expenditure of County</p>
<p style="text-align: right;">54</p> <p>1 A. I don't recall.</p> <p>2 Q. At the first meeting or the second meeting or was</p> <p>3 there another meeting?</p> <p>4 A. I would say it was after the first meeting and in</p> <p>5 preparation for the second meeting. In addition, there were</p> <p>6 meetings of that because we needed to inform the County</p> <p>7 Executive.</p> <p>8 Q. Okay. And what were you told about this incident,</p> <p>9 the allegation that Ms. Conley made concerning the</p> <p>10 caseworker?</p> <p>11 A. PW?</p> <p>12 Q. Yes.</p> <p>13 A. Is that --</p> <p>14 Q. That would be the one.</p> <p>15 A. That it occurred and that it was judged to be -- I</p> <p>16 forget the term. I want to say baseless, but that's --</p> <p>17 whenever term they used to say that it was unsupported or</p> <p>18 un --</p> <p>19 Q. Unfounded.</p> <p>20 A. Unfounded. That may have been the term.</p> <p>21 Q. Okay. Do you know whether or not Ms. W had</p> <p>22 previously been disciplined for similar incidents?</p> <p>23 A. No.</p> <p>24 Q. Do you know whether or not other individuals had</p> <p>25 made similar allegations against Ms. W?</p>	<p style="text-align: right;">56</p> <p>1 funds would be appropriate. It was done solely at your</p> <p>2 discretion.</p> <p>3 MR. LANE: Objection to form.</p> <p>4 A. The request was made, and I -- rather, we talked</p> <p>5 about it. I suggested that we do that. But I don't know if</p> <p>6 there was -- I don't know of any policy. I wouldn't</p> <p>7 characterize that as a policy. It's our right to inspect</p> <p>8 County e-mail, just as it's our right to inspect any other</p> <p>9 County property. The question was -- the issue was brought</p> <p>10 to my attention. And I suggested that as a means to</p> <p>11 evaluate what participation, if any, Ms. Conley had in</p> <p>12 supplying Attorney Villella the document.</p> <p>13 Q. Okay. Did you ever think to ask Mr. Cauley before</p> <p>14 you expended County funds on this e-mail search, did you</p> <p>15 ever think of asking Mr. Cauley to ask Ms. Conley whether or</p> <p>16 not she had done this?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. Why does one not think of a thing. I don't know</p> <p>20 why one does not think of a thing. I'm not thinking about</p> <p>21 something right now, and I don't know why I'm not thinking</p> <p>22 about that thing that I'm not thinking about.</p> <p>23 Q. Okay. So you're saying that as an attorney, with</p> <p>24 an MBA, who is a professor, who teaches employment law, that</p> <p>25 it didn't occur to you when an employee is accused of</p>

<p style="text-align: right;">57</p> <p>1 wrongdoing, as Ms. Conley was, to call the employee in on</p> <p>2 the carpet and ask them whether or not they did it. It</p> <p>3 never occurred to you to do that.</p> <p>4 A. She was not accused of wrongdoing at that moment.</p> <p>5 Q. She was accused of providing a document to</p> <p>6 Mr. Villella that was -- you said was inappropriate. Is</p> <p>7 inappropriate not wrong?</p> <p>8 A. What was going on was that the document had gotten</p> <p>9 into the hands of Attorney Villella. It was not clear how</p> <p>10 it had gotten into that. We were trying to come to an</p> <p>11 understanding of that. It doesn't matter what that issue</p> <p>12 was -- that issue became irrelevant. Because, quite</p> <p>13 frankly, what was found in her e-mail was something which</p> <p>14 was not tolerable.</p> <p>15 Q. Okay. And I'm sorry, but that really isn't</p> <p>16 responsive to my question.</p> <p>17 A. Well, it's the facts of the matter.</p> <p>18 Q. My question is, is it your testimony that when</p> <p>19 Mr. Cauley came to you and said, in effect, Abby Conley gave</p> <p>20 a document to Jerry Villella that she shouldn't have, or at</p> <p>21 least I think she did, and we should do something about</p> <p>22 this, only he never had asked Ms. Conley if or how</p> <p>23 Mr. Villella got such a document, it never occurred to you</p> <p>24 to ask her.</p> <p>25 MR. LANE: Objection to form. Argumentative.</p>	<p style="text-align: right;">59</p> <p>1 A. My answer is, Abby was never asked because what we</p> <p>2 found was far more egregious.</p> <p>3 Q. Okay. And why wasn't she asked before you went</p> <p>4 off on this search?</p> <p>5 MR. LANE: Objection to form.</p> <p>6 A. I don't think that that would -- the idea was to</p> <p>7 try to determine what happened. And one way we did this was</p> <p>8 to look at her County e-mails. Those are County e-mails.</p> <p>9 We have every right to look at them. We looked at them.</p> <p>10 Let's say a car has a speeding -- a parking ticket</p> <p>11 and it's also involved -- you find something else. You</p> <p>12 don't worry about the parking ticket when you see evidence</p> <p>13 that it had gone through many red lights. The issue -- it's</p> <p>14 no longer relevant.</p> <p>15 Q. Okay. So you knew that you would find something</p> <p>16 else in the e-mails that would make it not worth your while</p> <p>17 talking to Abby.</p> <p>18 MR. LANE: Objection to form.</p> <p>19 A. We knew no such thing.</p> <p>20 Q. Then can you tell me why the first step in the</p> <p>21 investigation wasn't to talk to Abby.</p> <p>22 A. We wanted to come to an understanding of how it</p> <p>23 may have ended up -- we knew it was on Abby's computer</p> <p>24 system. We knew that it ended up with Attorney Villella.</p> <p>25 The first place to look would be to check on the computer.</p>
<p style="text-align: right;">58</p> <p>1 A. That is a mischaracterization. Rather, Michael</p> <p>2 came to me and spoke of what happened in the courtroom. The</p> <p>3 main concern that he had was the credibility of the</p> <p>4 department. He also had concerns about how this document</p> <p>5 may have ended up there.</p> <p>6 I suggested that he pull the e-mails and review</p> <p>7 it. The e-mails were reviewed. He provided -- supplied me</p> <p>8 with copies of the e-mail. It became quite clear that</p> <p>9 Ms. Conley had done something completely inappropriate, in</p> <p>10 violation of all standards within the department, and</p> <p>11 perhaps in violation of the --</p> <p>12 Q. And, again, that's not responsive.</p> <p>13 A. How is that not responsive?</p> <p>14 Q. The question is, why wasn't Abby asked in the</p> <p>15 course of this investigation what she had or had not done.</p> <p>16 A. Because that matter was not the reason why she was</p> <p>17 terminated, or why she was asked to resign. That matter</p> <p>18 became no longer relevant.</p> <p>19 Q. And it was not relevant because you choose to</p> <p>20 expend County funds to search through 2000 e-mails. And my</p> <p>21 question to you is, why was Abby never asked.</p> <p>22 MR. LANE: Objection to form.</p> <p>23 MR. JOYAL: Objection to form.</p> <p>24 MR. LANE: And asked and answered.</p> <p>25 MR. JOYAL: Relevance.</p>	<p style="text-align: right;">60</p> <p>1 Q. How did you know it was on her system? Did Cauley</p> <p>2 tell you that?</p> <p>3 A. Yes.</p> <p>4 Q. He said he had already checked her computer, and</p> <p>5 it was on there?</p> <p>6 A. No. He told me that she would have been the</p> <p>7 drafter. And I believe that it would be drafted on a</p> <p>8 computer, so. In addition, I think not only did I suggest</p> <p>9 her e-mail be looked at, but that the whole of her computer.</p> <p>10 Q. Okay. So, again, the question is, why isn't the</p> <p>11 first thing you did to have somebody ask Abby what happened?</p> <p>12 A. We chose the action because we thought this was</p> <p>13 appropriate.</p> <p>14 Q. And when did you receive Mr. Cauley's report?</p> <p>15 A. I believe it was dated. I don't remember the</p> <p>16 date.</p> <p>17 Q. I'm going to give you a copy of what's been marked</p> <p>18 as Cauley Deposition Exhibit No. 1. It appears to be a</p> <p>19 letter to you dated August 20, 2004. I believe it's signed</p> <p>20 by Mr. Cauley. Is that the report that you were speaking</p> <p>21 of?</p> <p>22 A. There are --</p> <p>23 Q. Or are there other reports?</p> <p>24 A. This is the report. However, there are</p> <p>25 handwritten notes on this. So this is not a true and</p>

<p style="text-align: right;">61</p> <p>1 accurate copy. It says Cauley's Depo. Exhibit No. 1. And I 2 believe that --</p> <p>3 Q. Let me just switch, okay. And that's also marked 4 Cauley No. 1. Okay. And it didn't come to you marked that 5 way, did it?</p> <p>6 A. Pardon? No.</p> <p>7 Q. Okay.</p> <p>8 A. No, it did not.</p> <p>9 Q. All right. And it's dated August 20th. Is that 10 the date day that you first saw it?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Did you review it with any other administration 13 officials or employees?</p> <p>14 A. Mr. Cauley hand brought this to me, is my 15 recollection. So when you say other, do you mean other than 16 the author?</p> <p>17 Q. Yeah.</p> <p>18 A. I believe I shared it with the personnel director. 19 I believe I -- Mr. Callan. I believe that I also asked if 20 Ms. Liebel had reviewed this or had knowledge of its 21 contents.</p> <p>22 Q. Okay. And she is noted as having received a copy, 23 right? CC Debbie Liebel, at the end underneath Mr. Cauley's 24 signature.</p> <p>25 A. Yes, that's correct.</p>	<p style="text-align: right;">63</p> <p>1 Q. What was Mr. Schenker's first knowledge of the 2 pendency of this issue or any issue involving Ms. Conley, to 3 your knowledge?</p> <p>4 A. That meeting.</p> <p>5 Q. Okay. He just came into the meeting on 6 September 10th?</p> <p>7 A. No. There was one meeting which was -- it was -- 8 I forget when it was scheduled. However, a meeting was 9 scheduled with Mr. Schenker, myself, Peter Callan, I believe 10 Deb Liebel, and Ann Bloxdorf.</p> <p>11 Q. When was that meeting?</p> <p>12 A. Early September. I don't recall the date.</p> <p>13 Q. Okay. At what point was a decision made that 14 Ms. Conley's employment would be terminated?</p> <p>15 A. Prior to the meeting with Mr. Schenker.</p> <p>16 Q. Okay.</p> <p>17 A. I don't recall.</p> <p>18 Q. That gives us pretty much from the beginning of 19 the world to September 10th. Could you narrow it down a 20 little bit.</p> <p>21 A. Between August 20th and September 10th.</p> <p>22 Q. Who made that decision?</p> <p>23 A. I would say it was a collective decision.</p> <p>24 Q. Okay. Who was ultimately responsible for that 25 decision?</p>
<p style="text-align: right;">62</p> <p>1 Q. Did you discuss it with Ms. Bloxdorf, or did she 2 review it?</p> <p>3 A. I believe I may have briefed -- I believe that I 4 orally briefed Ms. Bloxdorf. I do not believe that she read 5 it.</p> <p>6 Q. Okay. But Mr. Callan read the report and the 7 attachments?</p> <p>8 A. Yes.</p> <p>9 Q. What about Rich Schenker?</p> <p>10 A. I do not believe I provided Mr. Schenker a copy of 11 this. However --</p> <p>12 Q. Do you know if he's subsequently seen this 13 document?</p> <p>14 A. You would have to ask him.</p> <p>15 Q. I will. I just want to find out if you know. I'm 16 anxious.</p> <p>17 A. Your anticipation will have to wait.</p> <p>18 Q. So you didn't sit down and review this with Mr. 19 Schenker.</p> <p>20 A. That's not true. You're asking me if he reviewed 21 it. And my answer to that is no. However, I did brief him, 22 yes.</p> <p>23 Q. When was that?</p> <p>24 A. I would say shortly before the day Ms. Conley 25 resigned.</p>	<p style="text-align: right;">64</p> <p>1 MR. JOYAL: Objection to form.</p> <p>2 A. The termination is -- I would say there was a 3 collective decision. I would say that it's the department's 4 employee.</p> <p>5 Q. So you can't tell me who was ultimately 6 responsible for the decision.</p> <p>7 MR. LANE: Objection to form.</p> <p>8 A. I would say the department head.</p> <p>9 Q. Okay. So the decision to terminate Abby was made 10 by Debi Liebel.</p> <p>11 A. I would say that it was a decision we -- it was 12 quite clear that we could not tolerate an employee 13 performing in the manner in which Ms. Conley had.</p> <p>14 Q. Going into court and testifying the way she did; 15 is that what you mean?</p> <p>16 A. No. Rather, dispensing information to third 17 parties.</p> <p>18 Q. Okay. So it was Liebel's decision?</p> <p>19 A. You know, if you would ask who made the decision, 20 we all went into a room, and a decision was made. And, 21 quite frankly, it was all supported -- it was a collective 22 decision.</p> <p>23 Q. Who was the ranking official in the group of 24 people that made the decision?</p> <p>25 A. I guess I was.</p>

<p style="text-align: right;">65</p> <p>1 Q. Okay. Would it be fair to say that that decision 2 would not have been made without your agreement? 3 MR. LANE: Objection to form. 4 A. Would you answer -- would you state the question 5 again. If your question is if I disagreed with the 6 decision. 7 Q. No, that's not the question. 8 A. Okay. 9 Q. The question is, would a decision to terminate 10 Ms. Conley have gone forward if you had disagreed with it? 11 A. Probably not. 12 Q. When was this September 10th meeting actually 13 planned? 14 A. I don't recall. However, I do know that it had to 15 be rescheduled on at lease one occasion due to 16 Mr. Schenker's schedule. 17 Q. All right. So it had been planned. It doesn't 18 really answer the question. 19 A. Sometime subsequent to August 20th there was a 20 meeting that was scheduled, which had to be rescheduled on 21 at least one occasion. But it took place, I believe, the 22 day before the -- your client's resignation. I'm not very 23 good with dates, so. 24 Q. So you don't remember how long before 25 September 10th this meeting was initially planned.</p>	<p style="text-align: right;">67</p> <p>1 time about Mrs. Conley, and that was the actual meeting of 2 September 10th. 3 A. My recollection is that your client was -- final 4 day with the County was on a Friday. I believe we met with 5 Mr. Schenker on the Thursday before that. 6 Q. The day before or week before? 7 A. Day before. And it would have been -- that would 8 have been the meeting at which I informed him of the 9 contents of this document, and in a very generic form, and 10 also the decision to terminate. 11 Q. Okay. When was the option of terminating 12 Ms. Conley's employment first raised, to your knowledge? 13 A. A meeting prior to that with Mr. Schenker. 14 Q. Okay. So nobody had suggested terminating Abby's 15 employment until you met with Mr. Schenker? 16 A. No, no, no. At a meeting prior to that -- 17 Q. What meeting? 18 A. Let's be clear. I mean, there -- 19 Q. I'm trying to. 20 A. Of course. I asked Mike Cauley to prepare a 21 document outlining what he had found. He did that. We got 22 together. I would say "we" meaning Peter Callan, myself, 23 Deb Liebel, Mike Cauley. We discussed -- and Ann Bloxdorf. 24 We discussed the nature of the contents. And a decision was 25 made. We decided to inform the County Executive of what we</p>
<p style="text-align: right;">66</p> <p>1 A. No. 2 Q. When was Mr. Schenker first informed that such a 3 meeting would be held? 4 A. I'm not sure he was ever informed that a meeting 5 would be held. Rather, the schedule was informed of a need 6 to have a meeting, and that it involved a personnel matter. 7 Q. I thought you met with Mr. Schenker and briefed 8 him on Mr. Cauley's report and reviewed the documents with 9 him and got his concurrence in the decision. 10 A. That was at that meeting. 11 Q. That was before Ms. Conley showed up? 12 A. No. We met with -- we met with Mr. Schenker 13 before the termination date, before the date of -- 14 Q. Right. 15 A. And he never -- we didn't meet with -- it was at 16 that meeting. 17 Q. And when was that? 18 A. Again, I'm not very good with dates, so. 19 Q. Would you have a calendar? Would it be on your 20 calendar? 21 A. I had a calendar when I was at the County, which 22 was run on my Outlook, and I don't know where it is. 23 Q. There's no hard copy of that? 24 A. No. 25 Q. So there was -- you only met with Mr. Schenker one</p>	<p style="text-align: right;">68</p> <p>1 had found and the basis of what we had -- what decision we 2 had made. Basically, we were informing Mr. Schenker of a 3 heads-up. Mr. Schenker would not be involved in a matter of 4 this nature. 5 Q. And who in that meeting -- 6 A. What meeting? 7 Q. The one you just described with Ms. Liebel, 8 Mr. Cauley, all those people, where the decision was made to 9 terminate Abby's employment. Who in that meeting was the 10 first person to mention termination as an option? 11 A. I don't recall that. However, what do you do when 12 you have somebody who releases information of this nature to 13 a third person. 14 Q. I'm not here to answer your questions, sir. 15 A. Okay. 16 Q. All right. So you don't recall who first raised 17 the idea of terminating Abby's employment. 18 A. No. 19 Q. Do you recall on September 10th that you and 20 Mr. Schenker made a visit to the Erie Times-News? 21 A. Yes. 22 Q. What was your purpose of going up there? 23 A. Let's go back to -- well. 24 Q. Let's not. Let's answer my question. 25 A. To have a conversation with the editors of the</p>

<p style="text-align: right;">69</p> <p>1 paper.</p> <p>2 Q. About what?</p> <p>3 A. My understanding was that we were going to talk</p> <p>4 about MTR.</p> <p>5 Q. Okay. Who did you meet with up there?</p> <p>6 A. Jim Dible and Pat Howard.</p> <p>7 Q. What time was that meeting?</p> <p>8 A. 1:00 p.m.</p> <p>9 Q. And how long did you meet with Mr. Dible and</p> <p>10 Mr. Howard?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was it a lengthy meeting or was it a brief</p> <p>13 meeting?</p> <p>14 A. Relatively brief meeting.</p> <p>15 Q. Okay. And what topics were discussed at that</p> <p>16 meeting?</p> <p>17 A. Mr. Schenker began to talk about the fact that an</p> <p>18 employment action was going to be taken against your client.</p> <p>19 Q. He brought the subject up?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know why?</p> <p>22 A. You have to ask him.</p> <p>23 Q. Okay. Did he tell the newspaper that Ms. Conley</p> <p>24 was going to be terminated?</p> <p>25 A. I don't believe he used that term.</p>	<p style="text-align: right;">71</p> <p>1 Q. Was there any discussion of any involvement of the</p> <p>2 District Attorney in the Abby Conley matter?</p> <p>3 A. No.</p> <p>4 Q. With the newspaper. Okay. Did you discuss the</p> <p>5 personnel action with anybody from the newspaper?</p> <p>6 A. Yes.</p> <p>7 Q. On September 10th?</p> <p>8 A. Yes.</p> <p>9 Q. Who did you discuss it with?</p> <p>10 A. Jim Dible and Pat Howard.</p> <p>11 Q. What did you tell them?</p> <p>12 A. Mr. Schenker began to talk about this issue. And</p> <p>13 then he said, well, John will be telling you more about it.</p> <p>14 Q. Okay. And what did you tell them?</p> <p>15 A. I was surprised, so I didn't say much beyond what</p> <p>16 Mr. Schenker had already said.</p> <p>17 Q. Which was that there would be an employment</p> <p>18 action.</p> <p>19 A. Yes.</p> <p>20 Q. Not specifying what it was.</p> <p>21 A. That's correct.</p> <p>22 (Onorato Deposition Exhibit 1 marked for</p> <p>23 identification.)</p> <p>24 Q. I'm showing you what we've marked as Onorato</p> <p>25 Deposition Exhibit No. 1, which is a reprint of an article</p>
<p style="text-align: right;">70</p> <p>1 Q. Fired.</p> <p>2 A. I don't believe he used that term.</p> <p>3 Q. Was there any discussion by either you or</p> <p>4 Mr. Schenker with Ed Palatella?</p> <p>5 A. No.</p> <p>6 Q. Regarding Abby Conley on September 10th.</p> <p>7 A. No.</p> <p>8 Q. In what context did that topic arise?</p> <p>9 A. What topic?</p> <p>10 Q. The topic of employment action against Ms. Conley.</p> <p>11 How did that topic come up?</p> <p>12 A. Mr. Schenker was concerned because Mr. Palatella</p> <p>13 had been in the courtroom during the case involving Attorney</p> <p>14 Villella. And he wanted the paper to know that that was not</p> <p>15 the reason for the termination. Or the employment action, I</p> <p>16 should say.</p> <p>17 Q. So he brought it up without anybody asking him?</p> <p>18 A. Right.</p> <p>19 Q. Okay. Had there been any discussion of the Office</p> <p>20 of Children and Youth prior to that?</p> <p>21 A. No.</p> <p>22 Q. Were there any other topics discussed beside MTR</p> <p>23 and Abby Conley?</p> <p>24 A. I may have talked about the update regarding the</p> <p>25 prison cells.</p>	<p style="text-align: right;">72</p> <p>1 published September 12th, 2004 in the Erie Times-News. Do</p> <p>2 you recognize that as such?</p> <p>3 A. I'm sorry, I was -- could you repeat the question.</p> <p>4 I was reading.</p> <p>5 Q. Do you recognize this as a copy of an article that</p> <p>6 appeared in the newspaper?</p> <p>7 A. If you say it is, yes.</p> <p>8 Q. Okay. The article says that you acknowledged that</p> <p>9 Mr. Schenker told the Erie Times-News that he had planned to</p> <p>10 terminate Conley from her position.</p> <p>11 A. Onorato said he -- what was what?</p> <p>12 Q. Fifth paragraph. Or sixth paragraph, I'm sorry.</p> <p>13 A. Go ahead. What was it?</p> <p>14 Q. Okay. Did you tell Mr. Palatella that</p> <p>15 Mr. Schenker said -- had told the Erie Times-News that he</p> <p>16 planned to terminate Ms. Conley?</p> <p>17 A. Did I say that Schenker said?</p> <p>18 Q. Right. You were quoted as saying, "Onorato said</p> <p>19 he and Schenker are comfortable with the decision. He said</p> <p>20 Conley ultimately resigned, though he acknowledged Schenker</p> <p>21 told the Erie Times-News that Schenker had planned to</p> <p>22 terminate Conley from her position." Is that an accurate</p> <p>23 quote from you, or not?</p> <p>24 MR. LANE: I'm going to object.</p> <p>25 MR. JOYAL: Object to form because it's not a</p>



<p style="text-align: right;">73</p> <p>1 quote.</p> <p>2 Q. Does that accurately state what you told Mr.</p> <p>3 Palattella?</p> <p>4 A. Prior to seeing this, I did not even remember</p> <p>5 speaking with Palattella.</p> <p>6 Q. Is that accurate, or not?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you recall whether or not you read this article</p> <p>9 at about the time it was published?</p> <p>10 A. Yes, I do recall reading the article.</p> <p>11 Q. Did you object to the accuracy of the article at</p> <p>12 that time?</p> <p>13 A. No.</p> <p>14 Q. Did you contact the newspaper and tell them that</p> <p>15 your views were inaccurately quoted or inaccurately stated</p> <p>16 in that article?</p> <p>17 A. No. I remember briefly speaking with Ed</p> <p>18 Palattella perhaps on the 11th.</p> <p>19 Q. Okay. Do you recall who, if anyone, used the term</p> <p>20 "whistleblower" in that conversation of September 10th with</p> <p>21 Mr. Dible and Mr. Howard?</p> <p>22 A. Yes.</p> <p>23 Q. Who?</p> <p>24 A. Mr. Schenker.</p> <p>25 Q. All right. And do you recall exactly what</p>	<p style="text-align: right;">75</p> <p>1 informed of her right to receive -- or to have a union</p> <p>2 member steward participate.</p> <p>3 Q. Okay. When did you arrive at this meeting, on</p> <p>4 September 10th?</p> <p>5 A. I believe upon my return from the newspaper, I</p> <p>6 spoke with Mr. Callan.</p> <p>7 Q. And then where did this meeting take place?</p> <p>8 A. Mr. Callan's office.</p> <p>9 Q. So you went from the newspaper to Mr. Callan's</p> <p>10 office.</p> <p>11 A. That's correct.</p> <p>12 Q. Who else was there when you got there?</p> <p>13 A. Myself and Mr. Callan.</p> <p>14 Q. Did anybody else come?</p> <p>15 A. Yes.</p> <p>16 Q. Who came next?</p> <p>17 A. Ms. Liebel.</p> <p>18 Q. All right. And about what time did Ms. Liebel get</p> <p>19 there, if you recall?</p> <p>20 A. Perhaps between 2:30 and 3:00.</p> <p>21 Q. Okay. And who -- did anybody else come?</p> <p>22 A. Yes.</p> <p>23 Q. Who else?</p> <p>24 A. Ms. Conley.</p> <p>25 Q. Okay. So the meeting was you, Callan, Liebel, and</p>
<p style="text-align: right;">74</p> <p>1 Mr. Schenker said?</p> <p>2 A. That she is not.</p> <p>3 Q. She is not a whistleblower?</p> <p>4 A. Mr. Schenker said we are taking -- my recollection</p> <p>5 is that Mr. Schenker wanted to inform the paper of this</p> <p>6 because he did not want it characterized as a whistleblower</p> <p>7 being let go. And he said as much in the meeting.</p> <p>8 Q. Okay. He said, I don't want you to think this is</p> <p>9 because she's a whistleblower.</p> <p>10 A. Right. But, rather, it's for some other reason</p> <p>11 which we cannot tell you about. This some other reason</p> <p>12 being the prognostic detention order which she related to</p> <p>13 Deanna Cosby.</p> <p>14 Q. As County Solicitor you're familiar with the terms</p> <p>15 of the collective bargaining agreement governing Office of</p> <p>16 Children and Youth employees, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And did you make efforts to ensure that the</p> <p>19 confrontation that occurred on September 10th with</p> <p>20 Ms. Conley occurred in compliance with the terms of that</p> <p>21 agreement?</p> <p>22 MR. JOYAL: I object to the form, the word</p> <p>23 "confrontation".</p> <p>24 MR. LANE: I join in that.</p> <p>25 A. I remember Peter Callan making sure that Abby was</p>	<p style="text-align: right;">76</p> <p>1 Abby?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Was Mr. Schenker present for this meeting</p> <p>4 at all?</p> <p>5 A. No.</p> <p>6 (Recess held from 12:35 p.m. to 12:47 p.m.)</p> <p>7 Q. When we took a break, we were talking about the</p> <p>8 meeting of September 10th. And when we left off, you,</p> <p>9 Mr. Callan and Ms. Liebel were in Mr. Callan's office. Who</p> <p>10 was the next person to arrive; Ms. Conley?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. Did Ms. Bloxdorf attend this meeting at</p> <p>13 all?</p> <p>14 A. No.</p> <p>15 Q. So it was just the four of you?</p> <p>16 A. And a representative of the union.</p> <p>17 Q. When did the representative of the union arrive?</p> <p>18 A. Shortly after the beginning of the meeting.</p> <p>19 Q. Who notified Ms. Conley to come to the meeting, if</p> <p>20 you know?</p> <p>21 A. I don't know.</p> <p>22 Q. Who instructed that Ms. Conley be notified of the</p> <p>23 meeting? Who said, get Abby?</p> <p>24 A. I don't know.</p> <p>25 Q. Was there any discussion of advising Ms. Conley to</p>



<p style="text-align: right;">77</p> <p>1 have a union representative when she arrived at the meeting?</p> <p>2 A. Yes.</p> <p>3 Q. Before she arrived at the meeting.</p> <p>4 A. No.</p> <p>5 Q. Was she told that this was a personnel meeting,</p> <p>6 and that she was entitled to union representation before she</p> <p>7 arrived?</p> <p>8 A. I don't know what she was told, because I was not</p> <p>9 the one who told her.</p> <p>10 Q. Okay.</p> <p>11 A. Nor was I the one -- I don't know what she was</p> <p>12 told.</p> <p>13 Q. All right. And was anything discussed with</p> <p>14 Ms. Conley before the union representative arrived?</p> <p>15 A. Introductions were made. This was the first time</p> <p>16 in which I had met Ms. Conley. I believe it may have well</p> <p>17 been the first time Mr. Callan met Ms. Conley. Mr. Callan</p> <p>18 sat behind his desk, informed Ms. Conley that we are here to</p> <p>19 discuss an employment matter, and that she had a right to a</p> <p>20 union representative. I do not recall anything of a</p> <p>21 substantive nature being discussed prior to the union</p> <p>22 representative being there.</p> <p>23 Q. Was the Item 1 in Mr. Cauley's memo the e-mail</p> <p>24 to -- involving VW discussed prior to the union</p> <p>25 representative arriving?</p>	<p style="text-align: right;">79</p> <p>1 of what a prognostic detention order was and why it was so</p> <p>2 important what we had found, and why it was such an</p> <p>3 egregious violation of the confidentiality of the</p> <p>4 department.</p> <p>5 Q. All right. Did you explain to the union</p> <p>6 representative that that was not what you were looking for</p> <p>7 when you began to search Ms. Conley's e-mails?</p> <p>8 A. I don't believe I mentioned anything other than we</p> <p>9 have reviewed Ms. Conley's e-mails and found this. I do not</p> <p>10 believe I informed the union representative -- there was no</p> <p>11 discussion as to why the e-mails were looked at.</p> <p>12 Q. Okay. So you didn't tell the union rep that the</p> <p>13 e-mails review arose out of Ms. Conley's July 28th</p> <p>14 testimony?</p> <p>15 A. No.</p> <p>16 Q. Did Ms. Conley talk about the July 28th testimony</p> <p>17 as being a motivation for her termination?</p> <p>18 A. It was clear that despite Ms. Liebel, Mr. Callan</p> <p>19 and -- trying to direct her attention to the release --</p> <p>20 Q. The question is, sir. I'm sorry, I didn't mean to</p> <p>21 cut you off. But you're really making this a lot longer</p> <p>22 than it has to be. The question is, did Abby bring up the</p> <p>23 July 28th testimony in this meeting?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. In what context did she raise that?</p>
<p style="text-align: right;">78</p> <p>1 A. I would consider that a substantive matter, and I</p> <p>2 do not recall that being discussed prior to the arrival of</p> <p>3 the union representative.</p> <p>4 Q. Did anybody else discuss that matter with her</p> <p>5 before the union rep got there?</p> <p>6 A. I don't recall it being discussed.</p> <p>7 Q. Was the union representative then present for all</p> <p>8 substantive discussions that occurred?</p> <p>9 A. That's my understanding. My recollection.</p> <p>10 Q. Was the issue of this e-mail about this detention</p> <p>11 order discussed at any point during this meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Who brought that up?</p> <p>14 A. I would say each of us in our own turn.</p> <p>15 Q. So all three of you discussed that with Abby and</p> <p>16 the union rep.</p> <p>17 A. I would say that Ms. Liebel initially began to</p> <p>18 discuss the matter. Mr. Callan -- Ms. Conley tried to talk</p> <p>19 about other things. Mr. Callan tried to talk about the</p> <p>20 matter. Ms. Conley tried to talk about other things. And</p> <p>21 then I brought up this issue.</p> <p>22 Q. Okay. And you brought that up in the presence of</p> <p>23 the union representative.</p> <p>24 A. Yes. In fact, I remember specifically talking</p> <p>25 directly to the union representative, explaining the nature</p>	<p style="text-align: right;">80</p> <p>1 A. She was informed by first Ms. Liebel, then</p> <p>2 Mr. Callan and myself, that she had released information to</p> <p>3 third parties. She kept talking about the testimony, not</p> <p>4 acknowledging, understanding or recalling the e-mail to</p> <p>5 Deanna Cosby. And we kept trying to get her to focus on the</p> <p>6 matter which was the cause of her termination, which was</p> <p>7 that she released the information to Deanna Cosby regarding</p> <p>8 the prognostic detention order.</p> <p>9 Q. Okay. Did Ms. Conley state that she was being</p> <p>10 terminated as a result of her July 28th testimony?</p> <p>11 A. Pardon?</p> <p>12 Q. Did she make that statement, that the termination</p> <p>13 was motivated by her July 28th testimony?</p> <p>14 A. She -- I don't know what she -- I don't understand</p> <p>15 the question.</p> <p>16 Q. Did she say, you guys are firing me because I</p> <p>17 testified on July 28th, not because of any e-mail? Did she</p> <p>18 tell you that?</p> <p>19 A. She tried to couch our rationale for the</p> <p>20 employment action in those terms. We, however, maintained</p> <p>21 that it was due to her --</p> <p>22 Q. I know what you maintain. I'm asking --</p> <p>23 MR. LANE: Let him answer. Don't interrupt. I</p> <p>24 let you get away with it like five times now.</p> <p>25 MR. McNAIR: I'm tired of listening --</p>

<p style="text-align: right;">81</p> <p>1 This deposition is taking four times as long as it 2 should. 3 MR. LANE: Don't ask the questions. 4 MR. McNAIR: Because this guy won't answer a 5 question without making some speech reiterating 6 your defense. By the way, I know what your 7 defense is. 8 MR. LANE: Don't ask the question if you don't 9 want an answer. 10 MR. McNAIR: I want an answer to the question. I 11 don't want a speech that's irrelevant to the 12 question. 13 MR. LANE: Just don't interrupt him. 14 Q. Did you have a copy of the transcript of that July 15 28th hearing at the meeting? 16 MR. JOYAL: Mark, let him finish the question that 17 he wanted to in his answer. 18 A. What was your question? 19 MR. LANE: I don't even remember what it was. 20 Q. Did you have a copy of transcript of the July 28th 21 hearing at that meeting in Mr. Callan's office on 22 September 10th? 23 A. No. 24 Q. Did Ms. Conley tell you in the course of this 25 meeting that Judge Kelly had opined that the actions of OCY</p>	<p style="text-align: right;">83</p> <p>1 was mentioned in this meeting? 2 A. I wouldn't suggest that I said that there were 3 possible criminal sanctions. I just said that we could 4 discuss this matter in front of the District Attorney. 5 Q. What did you expect her to think when you said 6 we'll discuss it with the District Attorney? 7 A. I believe that she was trying to use the District 8 Attorney to say that she thought there was wrongdoing within 9 our department. And I said, well, we could all be talking 10 to the District Attorney, here's the issue, the fact is you 11 released information to a third party regarding the 12 detention of an infant that was to be born, this is 13 violation of the confidentiality of this -- of this 14 organization. 15 Q. Which statute did that violate? Was there some 16 criminal statute that was violated, in your opinion, or to 17 your knowledge? 18 A. There are various statutes which affect 19 confidentiality. 20 Q. Which one applied to that particular 21 communication? 22 A. I know that this is information which was to be -- 23 it was represented to me by attorneys that worked for the 24 department, that this is information which should be 25 confidential.</p>
<p style="text-align: right;">82</p> <p>1 in altering a court summary after she had signed off on it 2 could constitute obstruction of justice and lead to criminal 3 penalties? 4 MR. LANE: Objection to form. 5 A. No. 6 Q. She never brought up obstruction of justice? 7 A. She mentioned that she had reported the matter to 8 the District Attorney. She had mentioned the District 9 Attorney's County detective. And she had referred a matter 10 to Mr. Dombrowski. And that it related her -- her 11 conversation indicated there was the matter involving 12 Attorney Villella. 13 Q. Okay. Did she -- so you don't recall her saying 14 that Judge Kelly thought it was obstruction of justice, or 15 words to that effect. 16 A. No. 17 Q. Did you discuss with Ms. Conley that the District 18 Attorney might be involved or become involved in the matter 19 involving the e-mail to Deanna Cosby? 20 A. I mentioned -- when Abby Conley mentioned that she 21 had spoken to the District Attorney, I said, well, we could 22 also be speaking to the District Attorney, but we haven't -- 23 we could resolve this matter here. 24 Q. Okay. Was there any other mention of possible 25 criminal sanctions arising out of Ms. Conley's conduct that</p>	<p style="text-align: right;">84</p> <p>1 Q. By statute? 2 A. It was represented to me by the attorneys that 3 this is information which should be confidential. 4 Q. Did the attorneys represent that there was a 5 statutory violation involved in this e-mail? 6 A. I don't recall if they specifically said it was a 7 statute. I know that there's the Child Protective 8 Services -- I forget the actual title of the statutes. 9 Q. Did anybody ever tell you that the conduct in 10 sending that e-mail to Deanna Cosby was a violation of any 11 particular statute, or identify any statute? 12 A. No one said statute, section so-and-so dot 13 so-and-so, or anything of that nature. 14 Q. Did anybody say law? 15 A. Yes. 16 Q. It violates the CPSL? 17 A. Yes. 18 Q. You were told it violated the CPSL. 19 A. Yes. 20 Q. By who? 21 A. Attorney Michael Cauley. 22 Q. He said that disclosure of a so-called prognostic 23 detention order was a violation of the Child Protective 24 Services Law. 25 A. In his opinion, yes.</p>

<p style="text-align: right;">85</p> <p>1 Q. And did Mr. Cauley give you an opinion that there</p> <p>2 would be criminal sanctions associated with such a</p> <p>3 disclosure?</p> <p>4 A. Not that I recall. Again, the District Attorney's</p> <p>5 office was mentioned because your client was so far removed</p> <p>6 from the reality of what was going on, that she was bringing</p> <p>7 up the District Attorney. And I said, look, you know, we</p> <p>8 can all be before the District Attorney, but the issue is</p> <p>9 this.</p> <p>10 Q. Okay. I understand that. The only reason I'm</p> <p>11 asking all these questions is because one of your lawyers</p> <p>12 has been spouting for months that this is a criminal</p> <p>13 violation, and I'm still trying to figure out what criminal</p> <p>14 law was violated. And I think the answer to that question</p> <p>15 is you don't know what specific criminal law was violated,</p> <p>16 if any.</p> <p>17 A. If this is a violation of the Child Protective</p> <p>18 Services Law, I believe that there are criminal violations</p> <p>19 that are attended to that.</p> <p>20 Q. Okay.</p> <p>21 A. It's my understanding that -- I mean, I remember</p> <p>22 having to look at that act for a different matter, and I</p> <p>23 knew the violations of that.</p> <p>24 Q. Okay. So that's the criminal provision that was</p> <p>25 violated, the one in the CPSL?</p>	<p style="text-align: right;">87</p> <p>1 question. Don't interrupt him. Just finish your</p> <p>2 answer. It wasn't going to be that much longer.</p> <p>3 A. It wasn't going to be. It's just intolerable.</p> <p>4 Q. I understand that. It's intolerable.</p> <p>5 MR. LANE: Stop interrupting him.</p> <p>6 MR. McNAIR: I'm asking about the policy. I'm not</p> <p>7 asking about whether it's tolerable or</p> <p>8 intolerable.</p> <p>9 MR. LANE: Ask that as your next question.</p> <p>10 MR. McNAIR: You're wasting my time here. Don't</p> <p>11 appreciate it.</p> <p>12 MR. LANE: You're wasting my time right now. And</p> <p>13 you keep it up, and this thing is going to be</p> <p>14 over. Just go ahead and answer the question the</p> <p>15 way you wanted to answer it, and then let him ask</p> <p>16 his next question.</p> <p>17 MR. McNAIR: Why don't you answer the question in</p> <p>18 a manner that's responsive to the question. Can</p> <p>19 we do that.</p> <p>20 MR. LANE: Absolutely. He is being responsive.</p> <p>21 Do you remember what you were going to say now?</p> <p>22 MR. McNAIR: I didn't ask about tolerability. I</p> <p>23 asked him what policy was violated.</p> <p>24 MR. LANE: Do you remember what you were going to</p> <p>25 say now?</p>
<p style="text-align: right;">86</p> <p>1 MR. LANE: Objection. Lack of foundation.</p> <p>2 MR. McNAIR: His testimony.</p> <p>3 MR. LANE: He told you that somebody else told</p> <p>4 him. He didn't say he looked at it to determine</p> <p>5 whether it -- whether this particular act was a</p> <p>6 violation of the law. But you can tell him again</p> <p>7 whether you have an understanding or not.</p> <p>8 A. It's clear to me that your client violated the</p> <p>9 confidentiality rules under which the department operates.</p> <p>10 Q. And where are those rules set forth? What rule?</p> <p>11 Where would I look if I wanted to see what the rule was?</p> <p>12 A. The department requires that its employees keep</p> <p>13 matters involving the cases it handles confidential. And</p> <p>14 those are -- I'm sure that those are -- I do not work for</p> <p>15 the department. And I'm not familiar with the operations in</p> <p>16 terms of specific policies. However, I do know that to be</p> <p>17 the case. It would be intolerable for the County to have</p> <p>18 employees telling third parties --</p> <p>19 Q. In addition to being a criminal violation -- I</p> <p>20 know what you're going to say.</p> <p>21 MR. LANE: Hang on. Just let him --</p> <p>22 A. How do you know what I'm going to say?</p> <p>23 Q. Because you've said it about 56 times. I don't</p> <p>24 need to have you say it again.</p> <p>25 MR. LANE: You do, because he's answering a</p>	<p style="text-align: right;">88</p> <p>1 THE WITNESS: No, actually, I don't.</p> <p>2 MR. LANE: You forget what you were going to say?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. LANE: You successfully obstructed his</p> <p>5 testimony. Way to go.</p> <p>6 MR. McNAIR: Thank you.</p> <p>7 BY MR. McNAIR:</p> <p>8 Q. Okay. So was this violation of policy in addition</p> <p>9 to the criminal violation?</p> <p>10 A. Listen. Your client told a third party the</p> <p>11 nature --</p> <p>12 Q. This is not responsive. I'm aware of that.</p> <p>13 A. The prognostic detention order was in place. With</p> <p>14 intent that it get back to the mother. The County could not</p> <p>15 tolerate that of its employees.</p> <p>16 Q. Okay. I move to strike that as not responsive to</p> <p>17 the question. I'm asking you about policy.</p> <p>18 MR. JOYAL: The two of you don't have a brain</p> <p>19 between you.</p> <p>20 A. Go ahead. What about it?</p> <p>21 MR. McNAIR: Mr. Joyal, did you just tell</p> <p>22 Mr. Angelone that we don't have a brain between</p> <p>23 us?</p> <p>24 MR. JOYAL: Absolutely, Mr. McNair. You've been</p> <p>25 going with this deposition for almost three hours,</p>

<p style="text-align: right;">89</p> <p>1 and still being disrespectful to the witnesses and</p> <p>2 everyone else around. Okay. So try showing some</p> <p>3 respect to somebody.</p> <p>4 MR. McNAIR: I don't think I'm going to start with</p> <p>5 you.</p> <p>6 MR. ANGELONE: Thanks for lumping me in there too.</p> <p>7 MR. JOYAL: You're helping him.</p> <p>8 MR. ANGELONE: Is that right?</p> <p>9 BY MR. McNAIR:</p> <p>10 Q. And I'm asking you if you know what policy was</p> <p>11 violated.</p> <p>12 A. The County's policies.</p> <p>13 Q. Which policy? What is the name of the policy?</p> <p>14 A. I'm not sure the policies have a name. And I'm</p> <p>15 sure that if you've asked for them, the County has supplied</p> <p>16 you the documentation.</p> <p>17 MR. JOYAL: Give him the policies, Mark.</p> <p>18 A. Do you have a document you can share with me?</p> <p>19 Q. I don't know.</p> <p>20 A. You don't know if you have a document?</p> <p>21 Q. I'm trying to find out what document you're</p> <p>22 referring to. That's why I'm asking you.</p> <p>23 MR. McNAIR: Let the record reflect that Mr. Lane</p> <p>24 is coaching the witness during the deposition by</p> <p>25 handing him a document.</p>	<p style="text-align: right;">91</p> <p>1 your client's actions by informing a third party of the</p> <p>2 existence of a prenatal detention order with intent that the</p> <p>3 mother be informed of that is, indeed, a violation of this</p> <p>4 policy.</p> <p>5 Q. Okay. And can you designate which part of that</p> <p>6 policy that violates.</p> <p>7 A. Let me read the policy, then, for the record, and</p> <p>8 I believe it will speak for itself. "Confidentiality of</p> <p>9 client information is a most important requirement to be</p> <p>10 followed by all agency staff. Staff members must maintain</p> <p>11 written confidentiality under agency policy, Department of</p> <p>12 Public Welfare Regulations and the Child Protective Services</p> <p>13 Law, Act 124.</p> <p>14 Our clients have the right to expect that</p> <p>15 information about them will be kept in strict confidence.</p> <p>16 Due to the importance of maintaining confidentiality and to</p> <p>17 protect staff from liability, staff members are to adhere to</p> <p>18 the following practices. Whenever specific questions arise,</p> <p>19 consult with your supervisor.</p> <p>20 No. 1. Assure that all appropriate release forms</p> <p>21 are signed prior to releasing client information.</p> <p>22 No. 2. Information from other agencies or</p> <p>23 professionals should be released only with the approval of</p> <p>24 the agency or professional involved in the proper release</p> <p>25 forms.</p>
<p style="text-align: right;">90</p> <p>1 MR. LANE: You lied to him by saying you didn't</p> <p>2 know what he was referring to.</p> <p>3 MR. McNAIR: I don't know what he's referring to.</p> <p>4 MR. LANE: That's nonsense. You don't know -- the</p> <p>5 policy is in the letter that's in front of you</p> <p>6 right now. And if you turn that page, it's</p> <p>7 sitting right behind there. You're lying to me,</p> <p>8 you're lying to the witness. So stop lying.</p> <p>9 Don't tell the witness you don't know what policy</p> <p>10 exists on confidentiality.</p> <p>11 MR. McNAIR: I didn't tell him --</p> <p>12 MR. LANE: Is it sitting right in front of you?</p> <p>13 MR. McNAIR: You're misstating what I said.</p> <p>14 MR. LANE: Is it sitting right in front of you,</p> <p>15 Mr. McNair? Don't tell the witness you don't know</p> <p>16 what it is when it's in front of your nose and</p> <p>17 you're touching it with your fingers right now.</p> <p>18 MR. McNAIR: Are you done?</p> <p>19 MR. LANE: Now I am.</p> <p>20 BY MR. McNAIR:</p> <p>21 Q. Okay. Is this the policy that you're referring</p> <p>22 to?</p> <p>23 A. Attached to Michael Cauley's memo to me of August</p> <p>24 the 20th are a series of policies. One of which is the</p> <p>25 policy on confidentiality. It was represented to me that</p>	<p style="text-align: right;">92</p> <p>1 No. 3. The Child Protective Services, Act 124 law</p> <p>2 and regulations have specific requirements which staff must</p> <p>3 review prior to the release of information for those cases.</p> <p>4 No. 4. All client information is to be secured at</p> <p>5 the end of each workday.</p> <p>6 No. 5. Information discussed within the agency is</p> <p>7 to be handled in the most discrete manner possible, and</p> <p>8 discussion of any case is to be for professional purposes</p> <p>9 only.</p> <p>10 No. 6. A staff member who has knowledge that a</p> <p>11 friend or relative is involved with the agency is to have no</p> <p>12 contact with the case record. Unless the staff member is</p> <p>13 reporting information or officially involved, the case is</p> <p>14 not to be discussed with staff handling the case. If this</p> <p>15 causes a conflict, discuss this with your supervisor.</p> <p>16 No. 7. Information on clients is confidential and</p> <p>17 is not to be discussed with friends or others outside the</p> <p>18 agency."</p> <p>19 That is the confidentiality policy that I believe</p> <p>20 was in effect when your client informed a third party of the</p> <p>21 existence of a prenatal detention order with intent that it</p> <p>22 go back to the mother.</p> <p>23 Q. Okay.</p> <p>24 A. Was that responsive?</p> <p>25 Q. No. You would agree with me, she didn't violate</p>



<p style="text-align: right;">93</p> <p>1 Paragraph 1.</p> <p>2 A. "All appropriate release forms are signed prior to</p> <p>3 releasing client information." She released information</p> <p>4 about the client -- about --</p> <p>5 Q. What release form was not signed?</p> <p>6 A. I don't know if there -- I don't know whether a</p> <p>7 releases form was or was not signed. But I do believe</p> <p>8 that --</p> <p>9 Q. So you can't tell me that she violated that</p> <p>10 provision.</p> <p>11 A. I cannot say whether or not she adhered to that --</p> <p>12 Q. Information from other agencies or professionals.</p> <p>13 Did she release information from any other agency or</p> <p>14 professional?</p> <p>15 A. I believe that it was an order of court which was</p> <p>16 released.</p> <p>17 Q. Is that another agency?</p> <p>18 A. I believe that the courts are a separate body of</p> <p>19 the government, and that that perhaps could be construed as</p> <p>20 a separate agency, yes.</p> <p>21 Q. Court orders are public, aren't they?</p> <p>22 A. I do not know whether this was a public order or</p> <p>23 not.</p> <p>24 Q. Are they in the Constitution of Pennsylvania?</p> <p>25 A. There are times when court orders are under seal.</p>	<p style="text-align: right;">95</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And information on clients is confidential</p> <p>3 and is not to be discussed with friends or others outside</p> <p>4 the agency. And is it your opinion that that provision was</p> <p>5 violated?</p> <p>6 A. In this case the client is the yet-to-be-born</p> <p>7 child, so I believe that this could be construed as a</p> <p>8 violation of this policy. A child was to be born of someone</p> <p>9 whose children have been taken from her. The nature of this</p> <p>10 order was to protect that child. I believe that the child</p> <p>11 could well have been considered a client of the department.</p> <p>12 Q. In his initial meeting with you, did Mr. Cauley</p> <p>13 bring up the allegation that's set forth in Item No. 5 of</p> <p>14 his letter to you of August 20th where he states the</p> <p>15 employee -- "As you are aware, the employee has made</p> <p>16 baseless and untrue allocations [sic] to the Department of</p> <p>17 Public Welfare against caseworker PW."</p> <p>18 A. I'm sorry. What was your question?</p> <p>19 Q. My question was, was that discussed with you at</p> <p>20 your initial meeting with Mr. Cauley where you decided to go</p> <p>21 forward with the e-mail snoop?</p> <p>22 MR. LANE: Objection to form.</p> <p>23 A. Again, I would not characterize it as a snoop of</p> <p>24 e-mail, but, rather, a review --</p> <p>25 Q. When you decided to go through with the e-mail</p>
<p style="text-align: right;">94</p> <p>1 I'm not sure whether this order was under seal or not.</p> <p>2 Q. I can tell you, it wasn't. Okay. So you consider</p> <p>3 the Court of Common Pleas another agency that provided</p> <p>4 information that shouldn't have been disclosed.</p> <p>5 A. I do not know whether her actions violated number</p> <p>6 two or not.</p> <p>7 Q. Okay. And I think we've already established that</p> <p>8 you can't identify the provision of the Child Protective</p> <p>9 Services Law that was violated.</p> <p>10 A. Perhaps -- will you provide me the law, and I'll</p> <p>11 read it into the record, and then we can have a discussion</p> <p>12 about that as well.</p> <p>13 Q. I'm just asking you if, as you sit there, you can</p> <p>14 identify the provision.</p> <p>15 A. As I sit here, I do not have the provisions in</p> <p>16 front of me, so I cannot.</p> <p>17 Q. Thank you. Okay. And that -- No. 6. You would</p> <p>18 agree that Abby wasn't a relative or friend that was</p> <p>19 involved in this particular case.</p> <p>20 A. She may well have been a friend of individuals</p> <p>21 involved in this case. I do not know.</p> <p>22 Q. So you don't know.</p> <p>23 A. I don't know whether --</p> <p>24 Q. You would be speculating if you said she might be,</p> <p>25 right?</p>	<p style="text-align: right;">96</p> <p>1 review.</p> <p>2 A. Yes.</p> <p>3 Q. Was that discussed, in that initial meeting?</p> <p>4 A. Mr. Cauley mentioned to me its occurrence.</p> <p>5 However, he suggested that I speak with Attorney Allgeier</p> <p>6 for more information about that.</p> <p>7 Q. Did you ever speak to Ms. Allgeier?</p> <p>8 A. Yes.</p> <p>9 Q. And what did she tell you?</p> <p>10 A. I don't recall because, quite frankly -- I don't</p> <p>11 recall much, expect that allegations were made by</p> <p>12 Ms. Conley, which were not supported by an investigation by</p> <p>13 the state. I was here when the individual from the state</p> <p>14 testified, and I believe her testimony when she called Ms. W</p> <p>15 demonic and what-have-you. You are probably fully aware of</p> <p>16 that.</p> <p>17 Q. Okay. Did that allegation have any impact or</p> <p>18 carry any weight in the decision to take action against</p> <p>19 Ms. Conley?</p> <p>20 A. No. Ms. Conley had done the most --</p> <p>21 Q. I just asked -- you've answered the question.</p> <p>22 Thank you. Now, if I understand correctly, this e-mail</p> <p>23 review that was undertaken in Ms. Conley's case was the only</p> <p>24 time that ever happened during the period of time you were</p> <p>25 Erie County Solicitor.</p>

<p style="text-align: right;">97</p> <p>1 A. The only time of which I was aware, yes.</p> <p>2 Q. Okay. It might have happened other times and you</p> <p>3 wouldn't know about it.</p> <p>4 A. If it happened other times and which I didn't know</p> <p>5 about it, then I didn't know about it, and it would have</p> <p>6 happened, so.</p> <p>7 Q. Okay. So it wasn't something that needed your</p> <p>8 approval to do that.</p> <p>9 MR. LANE: Objection to form.</p> <p>10 A. There was no policy. We talked about the policy</p> <p>11 under which e-mail reviews were conducted. There was only</p> <p>12 one, to my knowledge, which ever was conducted. It was</p> <p>13 conducted, I would believe -- I recall it was at my</p> <p>14 suggestion or in concurrence.</p> <p>15 Q. Okay. But, still, it's the only one that you're</p> <p>16 aware of.</p> <p>17 A. That is correct.</p> <p>18 Q. Did you ask Ms. Conley to resign her employment on</p> <p>19 September 10th?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Why did you ask her to do that, instead of just</p> <p>22 terminating her?</p> <p>23 A. We actually wanted to be kind to Ms. Conley. In</p> <p>24 retrospect, we should have just terminated her. However,</p> <p>25 the agreement was if she were to resign, we would not, among</p>	<p style="text-align: right;">99</p> <p>1 Q. Okay. Despite the fact it's only signed by Debra</p> <p>2 Liebel and Peter Callan.</p> <p>3 A. Yes.</p> <p>4 Q. Was Ms. Conley told what would be the outcome if</p> <p>5 she did not sign the resignation?</p> <p>6 A. I told her that we were progressing in steps.</p> <p>7 This was the first option that she had, to resign. In which</p> <p>8 case she would -- we would not contest unemployment</p> <p>9 compensation. And we would also, if I recall correctly,</p> <p>10 promise that we would only confirm dates of employment with</p> <p>11 the County. We would not give negative feedback when</p> <p>12 requested for potential prior employers.</p> <p>13 Q. Okay. Did you tell her that if she didn't resign,</p> <p>14 her employment would be terminated anyway?</p> <p>15 A. If I didn't say that, I certainly implied it.</p> <p>16 That, certainly, she was not going to leave that day as a</p> <p>17 member of County government, employee of County government.</p> <p>18 Q. Okay. So you would agree with me that she knew</p> <p>19 that if she didn't sign this, that her employment was going</p> <p>20 to be terminated.</p> <p>21 A. I believe that -- yes.</p> <p>22 Q. Okay. Now, I think we discussed that part of your</p> <p>23 job was to defend civil service appeals.</p> <p>24 A. That's correct.</p> <p>25 Q. And you're aware Ms. Conley filed a civil service</p>
<p style="text-align: right;">98</p> <p>1 other things, contest the unemployment compensation.</p> <p>2 Q. Okay.</p> <p>3 A. And when she agreed to this, I went to my office,</p> <p>4 drafted, rather hurriedly, a document which memorialized</p> <p>5 this. Returned. Asked her to execute. We noticed that</p> <p>6 there was a typo. I believe I had spelled Ms. Conley's name</p> <p>7 with two Ns, or maybe it was two Ls, I've forgotten which.</p> <p>8 I amended it. Returned.</p> <p>9 (Onorato Deposition Exhibit 2 marked for</p> <p>10 identification.)</p> <p>11 Q. And we've given you what's been marked as Onorato</p> <p>12 Deposition Exhibit 2. Is that the letter that you just</p> <p>13 referred to?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Down at the bottom is a paragraph that</p> <p>16 said, "We hereby accept your voluntary resignation and the</p> <p>17 terms thereof. And on behalf of County, I/we promise that</p> <p>18 we will not disclose, disseminate, publicize, comment or</p> <p>19 speculate on the nature or cause of your termination." Is</p> <p>20 that language that you put in there?</p> <p>21 A. Yes.</p> <p>22 Q. Did you take that as an undertaking on the part of</p> <p>23 the entire County, that the County would not speculate or</p> <p>24 comment on the reasons for Ms. Conley's termination?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">100</p> <p>1 appeal in this case.</p> <p>2 A. That's correct.</p> <p>3 Q. And what was the reason that you chose to have an</p> <p>4 outside law firm handle that rather than handling it</p> <p>5 in-house?</p> <p>6 A. Because I believe, due to my nature and</p> <p>7 involvement in this termination, that I would be a witness.</p> <p>8 And that both myself and by extension my assistant</p> <p>9 solicitors would be tainted. Therefore, I asked --</p> <p>10 therefore, I sought outside representation of the County in</p> <p>11 this matter.</p> <p>12 Q. Okay. And in the dozen or so civil service cases</p> <p>13 that you handled -- you said there were about a dozen?</p> <p>14 A. Actually, I thought about it. There may have</p> <p>15 been -- I can only recall six, now that we mention it.</p> <p>16 Q. Half dozen cases that you handled. How much time</p> <p>17 would you typically spend preparing for the hearing?</p> <p>18 A. It depended upon the case.</p> <p>19 Q. What was the range, in your experience?</p> <p>20 A. I don't recall.</p> <p>21 Q. Was it customary for you to spend 286.4 hours</p> <p>22 preparing for a civil service hearing?</p> <p>23 A. There was a civil service audit that was conducted</p> <p>24 of the County in which I prepared a considerable amount of</p> <p>25 time.</p>



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<p>1 Q. I said civil service hearing.</p> <p>2 A. Okay.</p> <p>3 Q. Would you typically spend that amount of time</p> <p>4 preparing for a civil service hearing?</p> <p>5 A. This audit was a hearing.</p> <p>6 Q. I'm not asking about an audit. I'm asking about a</p> <p>7 hearing filed by an employee against whom action had been</p> <p>8 taken.</p> <p>9 A. Okay.</p> <p>10 Q. I am not asking about an audit. That's got</p> <p>11 nothing to do with it.</p> <p>12 A. Well, you said hearing, and an audit is a hearing</p> <p>13 of type.</p> <p>14 Q. I tried to clarify my question.</p> <p>15 A. I was trying to be responsive.</p> <p>16 Q. I'm sure you were.</p> <p>17 A. What was your question?</p> <p>18 Q. Would you typically spend 286.4 hours preparing</p> <p>19 for a civil service appeal filed by an employee against whom</p> <p>20 an employment action had been taken?</p> <p>21 A. Because I was the County Solicitor and more</p> <p>22 familiar with the civil service code, there are economies of</p> <p>23 scale of me preparing for those type of hearings. If you</p> <p>24 only do one intermittently, it may take -- it may take more</p> <p>25 hours in which to prepare.</p>	<p>1 labor contract negotiations and was a former assistant</p> <p>2 solicitor for the County of Erie. He is a partner with the</p> <p>3 MacDonald Illig firm.</p> <p>4 Q. So that's how you chose the MacDonald Illig firm,</p> <p>5 or you chose Roger Taft?</p> <p>6 A. To me, there was no distinction.</p> <p>7 Q. Okay. Did Taft represent to you that he had</p> <p>8 experience in doing civil service appeals?</p> <p>9 MR. LANE: Objection, relevance.</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. Do you recall receiving a bill from the</p> <p>12 MacDonald Illig firm for \$56,000 that was charged for</p> <p>13 preparing for the civil service hearing?</p> <p>14 A. Yes. I recall receiving the bill.</p> <p>15 Q. Okay. Did you review that bill?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And did the expenditures of time on that</p> <p>18 bill and the activities undertaken to you appear to be</p> <p>19 reasonable and within the scope of the retainer?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall that that payment became public</p> <p>22 knowledge in an article published in the newspaper on</p> <p>23 January 17th, 2005?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall discussing that bill with</p>
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<p>1 Q. I'm sure that's true. But the question was, is</p> <p>2 that the amount of time that you would typically spend.</p> <p>3 A. I don't recall how many hours I would spend. As</p> <p>4 the County Solicitor I did not keep time slips. I was a</p> <p>5 salaried employee.</p> <p>6 Q. Was there --</p> <p>7 A. I would spend as much time as required for me to</p> <p>8 be acquainted with the case, understand the testimony of</p> <p>9 witnesses, familiar with the exhibits, understand the law,</p> <p>10 and present the County's position in court.</p> <p>11 Q. Okay. And would that normally take 286.4 hours,</p> <p>12 or not?</p> <p>13 A. Again, I was not in the position where I would</p> <p>14 record time, so I don't know how many hours it took for the</p> <p>15 cases which I presented.</p> <p>16 Q. So it might have been that much. That might be a</p> <p>17 typical amount of time that you would spend.</p> <p>18 A. It might have been more. It might have been less.</p> <p>19 If one does not know, one does not know, and I do not know.</p> <p>20 Q. Why did you choose to hire the MacDonald Illig</p> <p>21 firm?</p> <p>22 MR. JOYAL: Objection. What relevance does this</p> <p>23 have to her termination? Talk about wasting time.</p> <p>24 Q. You can answer the question.</p> <p>25 A. Attorney Roger Taft had represented the County in</p>	<p>1 Mr. Palattella?</p> <p>2 A. If he was the reporter. Do you have a copy of the</p> <p>3 article?</p> <p>4 Q. Yes, I do.</p> <p>5 (Onorato Deposition Exhibit 3 marked for</p> <p>6 identification.)</p> <p>7 Q. You've been given a copy of what's been marked as</p> <p>8 Onorato Deposition Exhibit No. 3, which is a reprint of an</p> <p>9 article of January 17, 2005 from the Erie Times-News. Do</p> <p>10 you recall that article being in the newspaper?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Do you recall speaking to Mr. Palattella in</p> <p>13 connection with that article?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. On the third page of that document, in the</p> <p>16 sixth paragraph, you're quoted as saying, "In essence,</p> <p>17 Onorato said of the \$56,371 the fee was being spent in the</p> <p>18 defense of children."</p> <p>19 A. That's correct.</p> <p>20 Q. Is that an accurate quotation?</p> <p>21 A. Yes. Both in words and content.</p> <p>22 Q. Did you have any concern over how such a statement</p> <p>23 would be interpreted?</p> <p>24 A. No.</p> <p>25 Q. So, to you, Ms. Conley's e-mail constituted a</p>

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<p>1 threat to children.</p> <p>2 A. I believe that her release of information to a</p> <p>3 third party -- that the County could not tolerate having</p> <p>4 employees release information to third parties about OCY</p> <p>5 cases, and that that -- that was the reason for my</p> <p>6 statement.</p> <p>7 Q. Okay. Not that she presented a threat to</p> <p>8 children; she represented a threat to the security of</p> <p>9 information to OCY.</p> <p>10 A. And look at the reason -- why is that -- then you</p> <p>11 must ask yourself, why is that information to be kept</p> <p>12 secure.</p> <p>13 Q. Could you answer the question first.</p> <p>14 A. What question?</p> <p>15 Q. The question that I asked you.</p> <p>16 A. What is the question?</p> <p>17 MR. McNAIR: Could you read back the question,</p> <p>18 please.</p> <p>19 A. There was a rationale why that information is to</p> <p>20 be kept confidential. That rationale is so that the</p> <p>21 department can fulfill its obligation to protect children.</p> <p>22 Q. Okay. Can you explain to me how that constituted</p> <p>23 a threat to children.</p> <p>24 MR. LANE: Objection to form.</p> <p>25 A. Ms. Conley informed third parties of the nature of</p>	<p>1 lets down those --</p> <p>2 Q. No, a child that she was caring for. A child in</p> <p>3 her custody.</p> <p>4 A. My understanding is when she fails to -- I'm here</p> <p>5 to answer your questions, not to argue with you.</p> <p>6 MR. LANE: Just let him answer the question.</p> <p>7 MR. McNAIR: It's not responsive to the question.</p> <p>8 Just asked it again. Go ahead. It's your day.</p> <p>9 A. I'm here to answer your questions, not to argue</p> <p>10 with you.</p> <p>11 Q. You're here to waste my time, but go on.</p> <p>12 MR. LANE: Well, if you think it's being wasted,</p> <p>13 then just conclude the deposition.</p> <p>14 MR. McNAIR: I'm just trying to get an answer to a</p> <p>15 simple question.</p> <p>16 MR. LANE: He's trying to answer your question.</p> <p>17 A. Just because you do not like the answer does not</p> <p>18 mean you've not been afforded an answer.</p> <p>19 Q. I don't like the answer because it's not</p> <p>20 responsive to the question.</p> <p>21 A. You do not like the answer because it's the truth.</p> <p>22 MR. JOYAL: I'm going to object to both of this</p> <p>23 and ask, if the question you're asking concerning</p> <p>24 custody, are you talking about her own child?</p> <p>25 MR. McNAIR: I'm talking about any child.</p>
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<p>1 a prognostic detention order. That constituted a threat to</p> <p>2 that child.</p> <p>3 Q. Okay. So to defend that child, you terminated</p> <p>4 Ms. Conley's employment.</p> <p>5 A. No, not just that. It's -- listen, she did</p> <p>6 something which was contrary to the policy, which was --</p> <p>7 policies which have been provided. That's why she was</p> <p>8 terminated. This was a --</p> <p>9 Q. I'm asking you how that was threatening to the</p> <p>10 children that you speak of.</p> <p>11 A. If she does not do her job properly, children are</p> <p>12 at risk. If she acts if inappropriately, children are at</p> <p>13 risk.</p> <p>14 Q. You would agree with me that you're not aware of</p> <p>15 any evidence that Ms. Conley has ever physically or sexually</p> <p>16 abused a child, are you?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of any evidence that Ms. Conley has</p> <p>19 ever neglected to care for a child in her charge, that she</p> <p>20 was responsible for?</p> <p>21 A. I know that she has not fulfilled her job function</p> <p>22 as required.</p> <p>23 Q. That's not the question. The question is, did she</p> <p>24 ever neglect to care for a child she was responsible for?</p> <p>25 A. When she fails to fulfill her job as required, she</p>	<p>1 MR. JOYAL: Any child in her custody. He doesn't</p> <p>2 know whether she had any kids.</p> <p>3 MR. ANGELONE: That's what we're asking. He won't</p> <p>4 say I don't know.</p> <p>5 MR. McNAIR: We're just asking him to say he</p> <p>6 doesn't know. That's all. Haven't you ever taken</p> <p>7 a deposition before? Don't you know that</p> <p>8 sometimes you want the witness to admit that they</p> <p>9 don't know certain things? I'm just trying to get</p> <p>10 him to say he doesn't know, or that he's not aware</p> <p>11 of any such evidence. Is it that hard? He didn't</p> <p>12 want to do that. We're going to be here a long</p> <p>13 time, because he's going to wind up saying that.</p> <p>14 A. It's not that I don't want to say what I don't</p> <p>15 know. Rather, I would like to say what I do know. And what</p> <p>16 I do know is that your client --</p> <p>17 Q. I'm not interested --</p> <p>18 MR. LANE: Let him answer the question.</p> <p>19 MR. McNAIR: I have 150, 200 pages of what he does</p> <p>20 know. I'm asking him whether he knows whether or</p> <p>21 not Ms. Conley has ever been accused of neglecting</p> <p>22 to care for a child in her charge. Not</p> <p>23 work-related.</p> <p>24 MR. LANE: That's a different question.</p> <p>25 MR. McNAIR: Aside from work. I'm trying to</p>

<p style="text-align: right;">109</p> <p>1 reword it. I'm trying to get an answer.</p> <p>2 MR. LANE: Accused. Has she ever been accused.</p> <p>3 Do you know whether she's ever been accused.</p> <p>4 MR. McNAIR: Of neglecting a child within the</p> <p>5 meaning of the Child Protective Services Law.</p> <p>6 A. No.</p> <p>7 Q. Okay. Are you aware of any instance other than</p> <p>8 this e-mail in which any action taken by Abby Conley has</p> <p>9 ever threatened the well-being of a child?</p> <p>10 A. Other than this e-mail, I do not know.</p> <p>11 Q. Okay. So your statement that 57, \$56,000 of</p> <p>12 County money was spent to defend children was spend to</p> <p>13 defend children from an e-mail.</p> <p>14 MR. JOYAL: Objection to form.</p> <p>15 A. No. The point is, is that had we lost this</p> <p>16 hearing, there was potential that this employee would be</p> <p>17 ordered to return to work. That, to me, would be</p> <p>18 intolerable. It is not -- it would -- it is not acceptable</p> <p>19 to have the County have under its employment an individual</p> <p>20 who releases confidential information to a third party.</p> <p>21 That, in my mind, frustrates the efforts of the department</p> <p>22 and poses a threat to children.</p> <p>23 Q. Okay. How do you know this order was</p> <p>24 confidential? What's your legal basis for stating that it</p> <p>25 was confidential? Or is that just what you were told?</p>	<p style="text-align: right;">111</p> <p>1 question. I'm really -- Mr. Lane, I would ask you</p> <p>2 to direct your client to answer the question</p> <p>3 that's asked, rather than repeating a speech.</p> <p>4 MR. LANE: He did.</p> <p>5 MR. McNAIR: It's going to be great on the stand,</p> <p>6 I'm sure.</p> <p>7 MR. LANE: He did.</p> <p>8 Q. Your answer to the question, just so that I</p> <p>9 understand, is you don't know whether or not the order of</p> <p>10 which Ms. Conley spoke was confidential or not.</p> <p>11 MR. LANE: Objection to form.</p> <p>12 A. The order is what it is. I did not know whether</p> <p>13 the order was under seal or not. I was informed by -- I</p> <p>14 believe I was informed by Mr. Cauley that these matters are</p> <p>15 generally not known by the mother.</p> <p>16 Q. Okay. But as far as you know, it wasn't under</p> <p>17 seal.</p> <p>18 A. I don't recall.</p> <p>19 Q. So as you sit here today, as far as you know, it</p> <p>20 was not under seal.</p> <p>21 A. I don't know whether it was, or is, or was. I</p> <p>22 don't know if it was or was not.</p> <p>23 Q. Okay. So you don't know if it was. Thank you.</p> <p>24 And you don't know whether the order was confidential under</p> <p>25 the terms of the Child Protective Services Law.</p>
<p style="text-align: right;">110</p> <p>1 A. The issue is this. She reported to a third party</p> <p>2 ongoing matters regarding a case. This third party had no</p> <p>3 reason to know about this. This was a violation of the</p> <p>4 confidentiality policy which I read into the record.</p> <p>5 Q. Okay.</p> <p>6 A. Whether the order --</p> <p>7 Q. The question was --</p> <p>8 A. Whether the order was --</p> <p>9 Q. The answer is, then, you don't know whether or not</p> <p>10 that order was confidential.</p> <p>11 A. It's not relevant. The fact is she told --</p> <p>12 Q. Look. It's not for you to determine what's</p> <p>13 relevant. Do you know whether or not the order was</p> <p>14 confidential, or not?</p> <p>15 MR. LANE: Objection.</p> <p>16 A. In my mind, it was not relevant because what she</p> <p>17 did by telling a third party about it constituted just cause</p> <p>18 for termination. She spoke of a case to someone who had no</p> <p>19 reason, professional or otherwise, to know about it. She</p> <p>20 did it through e-mail with intent that the person involved</p> <p>21 in the case find out about a matter of which they were</p> <p>22 unaware.</p> <p>23 Q. Okay.</p> <p>24 A. She acted appropriately, improperly.</p> <p>25 MR. McNAIR: This is not responsive to the</p>	<p style="text-align: right;">112</p> <p>1 MR. LANE: Objection to form.</p> <p>2 A. I know that Attorney Cauley and Ms. Liebel</p> <p>3 characterized this as confidential information.</p> <p>4 Q. Okay. I'm sure they did. I don't doubt you on</p> <p>5 that. I'm asking you for your own independent judgment.</p> <p>6 Did you judge that this was confidential information or did</p> <p>7 you strictly rely on the word of Mr. Cauley and Ms. Liebel?</p> <p>8 A. These are seasoned, respected individuals. I had</p> <p>9 no reason to doubt what they were telling me.</p> <p>10 Q. So that's yes?</p> <p>11 A. Yes, I relied upon what they told me.</p> <p>12 Q. Did you perform any independent investigation of</p> <p>13 any of the facts set forth in Mr. Cauley's September -- or</p> <p>14 August 20th letter?</p> <p>15 A. I reviewed the e-mails which he appended, and</p> <p>16 asked that all the e-mails be provided to me.</p> <p>17 Q. Did you review all the e-mails?</p> <p>18 A. I reviewed a substantial number of them. I'm not</p> <p>19 sure if I reviewed them all. However, I certainly reviewed</p> <p>20 the ones which were appended.</p> <p>21 Q. Okay. So you reviewed what Mr. Cauley gave you.</p> <p>22 A. In addition -- when you say gave me, do you mean</p> <p>23 as attachments or --</p> <p>24 Q. Yeah, he attached them to his letter and gave them</p> <p>25 to you.</p>

<p style="text-align: right;">113</p> <p>1 A. Well, there were others that he also gave me.</p> <p>2 Q. Okay.</p> <p>3 A. And I reviewed some of those as well.</p> <p>4 Q. Did you talk to any of the people involved?</p> <p>5 A. No.</p> <p>6 Q. And I think we can agree you didn't review any of</p> <p>7 the statutes to determine whether what they were telling you</p> <p>8 was true or not.</p> <p>9 A. I reviewed the documents which were attached.</p> <p>10 Q. Okay. So you didn't review any statutes.</p> <p>11 A. I reviewed the documents which were attached.</p> <p>12 Q. So did you review any statutes, or not?</p> <p>13 MR. LANE: If you recall.</p> <p>14 A. I don't recall.</p> <p>15 MR. LANE: By the way, the letter, you marked it</p> <p>16 Cauley's Deposition, the August 20th letter, you</p> <p>17 had indicated -- and I forget what exactly it was,</p> <p>18 that some of the documents weren't included with</p> <p>19 that.</p> <p>20 MR. McNAIR: The Word documents that were on her</p> <p>21 computer are the ones that were not attached. All</p> <p>22 the e-mails, everything but that, was attached.</p> <p>23 There were just two lengthy Word documents that</p> <p>24 have nothing to do --</p> <p>25 MR. LANE: I just didn't recall what they were.</p>	<p style="text-align: right;">115</p> <p>1 Q. Okay. If I could draw your attention back to</p> <p>2 Exhibit No. 3.</p> <p>3 A. Which one is -- is that the January 27th article?</p> <p>4 Q. No. Excuse me.</p> <p>5 MR. LANE: January 17th.</p> <p>6 Q. Yeah, let's go back to the September 12th article.</p> <p>7 A. I do.</p> <p>8 Q. Okay. All right. On the fourth page of that</p> <p>9 article, in the second paragraph from the bottom -- the</p> <p>10 fourth page. Second paragraph from the bottom. It says,</p> <p>11 "Onorato, the County Solicitor, said he reviewed a</p> <p>12 transcript of the hearing and said the County found no</p> <p>13 problems with how Deveney and other supervisors handled the</p> <p>14 case." Is this an accurate statement of what you told the</p> <p>15 reporter?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Okay. All right. So you found Deveney's actions</p> <p>18 in that case, that's referred to above in the article, to be</p> <p>19 appropriate?</p> <p>20 A. I would say that it went beyond just a review of</p> <p>21 the transcript, but an understanding of how the document in</p> <p>22 question is formed and its use.</p> <p>23 Q. Okay. So you found that Deveney's actions were</p> <p>24 appropriate.</p> <p>25 A. I found that they were in keeping with the</p>
<p style="text-align: right;">114</p> <p>1 Q. Would it be fair to say that in making your</p> <p>2 decision -- in making the decision to terminate Ms. Conley's</p> <p>3 employment, you relied on the information provided by</p> <p>4 Mr. Cauley and Ms. Liebel and Ms. Allgeier.</p> <p>5 MR. LANE: Objection to form.</p> <p>6 A. That information was provided. The decision was</p> <p>7 made, as I said, in a collective manner. I would not</p> <p>8 classify it directly as my decision, however, it was a</p> <p>9 decision of which I completely agreed. I mean, what else do</p> <p>10 you do when an individual releases information to a third</p> <p>11 party which they shouldn't.</p> <p>12 Q. I'm not asking you about that.</p> <p>13 A. It is --</p> <p>14 Q. I'm asking you about the sources of information</p> <p>15 that you had when a decision was made. And the only sources</p> <p>16 of information that you had at the time the decision to</p> <p>17 terminate Abby was made was based on what you had been told</p> <p>18 by Mr. Cauley, Ms. Liebel and Ms. Allgeier, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you had no other source of information.</p> <p>21 A. That's correct.</p> <p>22 Q. And you sought no other source of information.</p> <p>23 A. The evidence was damning and overwhelming.</p> <p>24 Q. And you did not direct any further investigation.</p> <p>25 A. There was no necessity to.</p>	<p style="text-align: right;">116</p> <p>1 standard operating procedures of the department.</p> <p>2 Q. Do you know whether those standard procedures have</p> <p>3 been changed since then?</p> <p>4 A. I do not know.</p> <p>5 Q. The bottom paragraph said -- you said you</p> <p>6 disagreed with Conley's testimony about the alteration of a</p> <p>7 court summary. And what basis did you have to say that?</p> <p>8 First of all, did you say that?</p> <p>9 A. I believe that -- I believe that she</p> <p>10 characterized -- what she characterized as an alteration is</p> <p>11 not. But, rather, it is the -- part of the editing and</p> <p>12 formatting process of the department.</p> <p>13 Q. Okay.</p> <p>14 A. She characterized something as being wrong, when,</p> <p>15 in fact, it was acceptable.</p> <p>16 Q. Okay. So you don't question the fact that</p> <p>17 Ms. Deveney changed the court summary that Ms. Conley</p> <p>18 submitted.</p> <p>19 A. I do not believe that the change was -- I believe</p> <p>20 it was in accord with the practices that the department was</p> <p>21 following at the time.</p> <p>22 MR. LANE: He asked you whether she changed it or</p> <p>23 not.</p> <p>24 A. Okay. I say that -- it was not the same</p> <p>25 document -- it was not -- did not contain the same verbiage</p>



<p style="text-align: right;">117</p> <p>1 that Ms. Conley had used.</p> <p>2 Q. Okay. So it had been changed by Ms. Deveney.</p> <p>3 A. I don't know by whom.</p> <p>4 Q. Okay.</p> <p>5 A. I know that the initial iteration Ms. Conley</p> <p>6 claims was hers.</p> <p>7 MR. McNAIR: That's all the questions I have.</p> <p>8</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. JOYAL:</p> <p>11</p> <p>12 Q. I have some questions. You have -- the first</p> <p>13 thing I want to ask you, is while Mr. McNair was talking</p> <p>14 about statutes, I want you to go back into, if you would --</p> <p>15 I'm going to give you a copy of 23 P.A. CSA Section 6339 and</p> <p>16 6340. This is part of the Child Protective Services Act.</p> <p>17 A. Yes.</p> <p>18 Q. Before you review those -- one is titled, I</p> <p>19 believe, Reports 3339 and 3340. 40, I believe, deals with</p> <p>20 people who can get information.</p> <p>21 A. 33 --</p> <p>22 Q. 6339 talks about confidentiality of reports.</p> <p>23 A. Yes, that's correct.</p> <p>24 Q. 6340 talks about the people who are entitled to</p> <p>25 information contained in the reports?</p>	<p style="text-align: right;">119</p> <p>1 A. "On August" --</p> <p>2 Q. -- prior to submitting that report to you.</p> <p>3 A. Yes. "On August 4th, 2004 I interviewed Kim</p> <p>4 Peebles, a supervisor of the clerical department of the</p> <p>5 Office of Children and Youth. She related being approached</p> <p>6 by the employee on August 2nd, 2004 with complaints about</p> <p>7 Supervisor Deveney and Caseworker W. According to Peebles,</p> <p>8 the employee reiterated the untrue allegations against</p> <p>9 caseworker W and discussed the particulars of that case with</p> <p>10 Ms. Peebles. This particular breach of confidentiality was</p> <p>11 done clearly to impune Caseworker W."</p> <p>12 Q. Now, you understood at that point in time, did you</p> <p>13 not, that this had to do with the report of child abuse that</p> <p>14 Abby Conley had filed --</p> <p>15 A. That is correct.</p> <p>16 Q. -- against Ms. W, correct?</p> <p>17 A. That is correct.</p> <p>18 Q. All right. Take a look at 6339, if you would.</p> <p>19 A. Yes.</p> <p>20 Q. Does that section of the statute not deal with</p> <p>21 reports of child abuse?</p> <p>22 A. It does.</p> <p>23 Q. Does it say that those reports are confidential?</p> <p>24 A. It does.</p> <p>25 Q. Now, take a look, if you would, at the next</p>
<p style="text-align: right;">118</p> <p>1 A. It's titled release of information in confidential</p> <p>2 reports.</p> <p>3 Q. Go back, if you would, to the -- I know Mr. McNair</p> <p>4 wanted to focus on the testimony in court. But go back, if</p> <p>5 you would, to Mr. Cauley's report to you.</p> <p>6 A. Yes.</p> <p>7 Q. How many areas did he point out to you as areas of</p> <p>8 concern?</p> <p>9 A. There was Item 1, breach of confidentiality. Item</p> <p>10 2, breach of confidentiality. Item 3, improper disclosure</p> <p>11 of County work product, violation of computer use policy.</p> <p>12 Item 4, violations of County computer use policy. Item 5,</p> <p>13 violations of employee work and conduct responsibility.</p> <p>14 Q. Okay.</p> <p>15 A. So five.</p> <p>16 Q. Five. Take look at No. 5.</p> <p>17 A. Yes.</p> <p>18 Q. If you would. Refresh your recollection by</p> <p>19 looking at it. By the way, Mr. Cauley has well put in what</p> <p>20 you thought the violations of the County personnel code</p> <p>21 were, right?</p> <p>22 A. Yes.</p> <p>23 Q. Take a look, if you would, at the second paragraph</p> <p>24 there which starts on August 4th, and read into the record</p> <p>25 what Mr. Cauley said he discovered --</p>	<p style="text-align: right;">120</p> <p>1 section. And skim it for me, and tell me if in that section</p> <p>2 of the statute regarding confidentiality, whether or not a</p> <p>3 supervisor of the clerical department at OCY would be a</p> <p>4 person, in your legal opinion, who would be entitled to</p> <p>5 release of that information?</p> <p>6 MR. McNAIR: Objection. Argumentative. Calls for</p> <p>7 a legal conclusion.</p> <p>8 MR. JOYAL: No, it's not. It's a question. He's</p> <p>9 a lawyer. You asked him questions all the time</p> <p>10 about that, Mr. McNair.</p> <p>11 Q. Take a look and see if --</p> <p>12 MR. McNAIR: I'm going to object.</p> <p>13 Q. -- there's somebody there that she should have</p> <p>14 given that information about that unfounded report to you on</p> <p>15 August 4th.</p> <p>16 A. I'm checking the pocket part as well on that.</p> <p>17 Q. Well, the pocket part, I think, went into effect</p> <p>18 in 2005.</p> <p>19 A. No, she is not --</p> <p>20 Q. She is not. So the totality of the circumstances</p> <p>21 on September 10th, between August 20th and September 10th</p> <p>22 would have indicated that at least concerning that report</p> <p>23 and that paragraph, there had been a violation -- or</p> <p>24 apparent violation of 23 P.A. CSA Section 6339 and 6340.</p> <p>25 MR. McNAIR: Objection, argumentative.</p>

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<p>1 Q. Would you agree?</p> <p>2 A. I would agree with that characterization.</p> <p>3 Q. Take a look, if you would as well -- now, you were</p> <p>4 aware, I believe during your conversations, that the report</p> <p>5 against Ms. W was filed sometime in June, June 21st?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. If you take a look at the attachments</p> <p>8 there, there's an e-mail, January 28th of '04, from Abby</p> <p>9 Conley to Deanna Cosby.</p> <p>10 A. June 28th.</p> <p>11 Q. June 28th, '04.</p> <p>12 A. I'm sorry. When is it? June --</p> <p>13 Q. June 28th, '04?</p> <p>14 A. The pages are not -- the e-mails are now --</p> <p>15 Q. They're not in order.</p> <p>16 A. -- in order. I believe this is it.</p> <p>17 Q. Yeah, that's the one. Is that the one that asks</p> <p>18 about -- June 28th, is that the e-mail that asks about</p> <p>19 whether Ms. Cosby has any information concerning PW's former</p> <p>20 husband?</p> <p>21 A. Yes.</p> <p>22 Q. Former clients?</p> <p>23 A. Yes.</p> <p>24 Q. Correct?</p> <p>25 A. Yes.</p>	<p>1 confidentiality. And what's the second sentence that starts</p> <p>2 with, "It is expected."</p> <p>3 A. "It is expected that confidentiality will be</p> <p>4 maintained regarding the recent incident in our unit."</p> <p>5 Q. Okay. Now, let's just stop for a second. Let me</p> <p>6 stop there. Were you aware -- did you at that point in time</p> <p>7 have any understanding of what that "recent incident" meant?</p> <p>8 A. When you say recent incident, do you mean</p> <p>9 July 9th?</p> <p>10 Q. Well, the e-mail is July 9th.</p> <p>11 A. Right.</p> <p>12 Q. Reference is a recent incident in our unit. And</p> <p>13 it then says, "It is not to be discussed with professionals</p> <p>14 from other agencies, nor with the parents, foster parent,"</p> <p>15 et cetera.</p> <p>16 MR. LANE: Are you asking whether he knew what</p> <p>17 that meant in August?</p> <p>18 Q. Yeah. Do you know what that meant in August, what</p> <p>19 incident it was talking about?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Now, that's July 9th.</p> <p>22 A. Right.</p> <p>23 Q. The PW report was July -- June 21.</p> <p>24 A. Yes.</p> <p>25 Q. My understanding is that it was around June 30</p>
122	124
<p>1 Q. As to whether she would be willing to testify</p> <p>2 about SD and PW to the Department of Public Welfare?</p> <p>3 A. Yes.</p> <p>4 Q. And, again, about another family that allegedly</p> <p>5 Ms. PW was maligning.</p> <p>6 A. Yes.</p> <p>7 Q. Now, you were aware at that point in time, on</p> <p>8 August 20th, as well as September 10th, that that had to do</p> <p>9 with the report of child abuse; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. As a lawyer, in your opinion, would that be</p> <p>12 another factor in terms of a violation of confidentiality,</p> <p>13 concerning not only PW in that report but other clients of</p> <p>14 the department -- for the Office of Children and Youth?</p> <p>15 A. Certainly.</p> <p>16 Q. Totality of the circumstances showed what to you?</p> <p>17 A. That this was an individual who could not keep</p> <p>18 matters confidential regarding cases. And, in fact, could</p> <p>19 not perform her job as a result.</p> <p>20 Q. Okay. And then just if you would too, there's a</p> <p>21 few pages after that. There's an e-mail from July 9th which</p> <p>22 is from Sue Deveney --</p> <p>23 A. Yes.</p> <p>24 Q. -- to Abby Conley. And this talks about</p> <p>25 confirmation about a meeting that was had regarding</p>	<p>1 that the DPW investigator had come out to investigate.</p> <p>2 A. That's correct.</p> <p>3 Q. Had anyone told you that, or did you come to a</p> <p>4 conclusion that what that was talking about was a directive</p> <p>5 to Ms. Conley, as well as others in the unit, not to be</p> <p>6 discussing that particular incident?</p> <p>7 A. That was my understanding.</p> <p>8 Q. Again, another indication that she had been warned</p> <p>9 about this stuff.</p> <p>10 A. Exactly.</p> <p>11 Q. Now, let's go back. There are some other e-mails</p> <p>12 in there too. But let's talk about the report that</p> <p>13 allegedly was altered, which was the subject matter of the</p> <p>14 July 28th testimony from Ms. Conley. Did not Mr. Cauley</p> <p>15 when he wrote about the -- I think it's No. 3.</p> <p>16 A. Yes.</p> <p>17 Q. Improper disclosure of County work product. In</p> <p>18 this stack of e-mails, there is an e-mail from Ms. Conley to</p> <p>19 Ms. Deveney, her supervisor. I believe it's dated April 19,</p> <p>20 which has an attachment to Ms. Deveney -- it's got Exhibit C</p> <p>21 on it here.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. See, it's a -- at the bottom -- really,</p> <p>24 what it is, is there is an e-mail dated May 4, 2004 to</p> <p>25 Abby@ilovejesus.net from Abby Conley.</p>



<p style="text-align: right;">125</p> <p>1 A. Yes.</p> <p>2 Q. Have you come to find out that that's Abby</p> <p>3 Conley's home computer address?</p> <p>4 A. Yes.</p> <p>5 Q. Below that, there look likes it's the forwarding</p> <p>6 of an e-mail that was sent from Abby Conley to Sue Deveney</p> <p>7 dated April 19th, 2004.</p> <p>8 A. Yes.</p> <p>9 Q. And you can see that if you look at the bottom of</p> <p>10 these, one is 11:41, one is at 11:42. The one at 11:41 says</p> <p>11 SH, court summary.</p> <p>12 A. Um-hum. Yes.</p> <p>13 Q. Dated April 19th going to Sue Deveney and Michele</p> <p>14 Schetter. And the one above it says CSH, which has 4</p> <p>15 kilobytes more of stuff.</p> <p>16 A. Yes.</p> <p>17 Q. Again dated April 19th, 10 minutes later, 11:01.</p> <p>18 A. Um-hum. Yes.</p> <p>19 Q. Did you come to find out that that was the</p> <p>20 document that came into Mr. Villella's possession?</p> <p>21 MR. McNAIR: Objection. There's no foundation for</p> <p>22 that. In fact, you know for a fact that's not</p> <p>23 true, because you talked to Mr. Villella.</p> <p>24 MR. JOYAL: I know I did.</p> <p>25 MR. McNAIR: Because he told me you did. Unless</p>	<p style="text-align: right;">127</p> <p>1 Mr. Villella.</p> <p>2 A. Exactly. But forwarded again in that direction.</p> <p>3 Q. Again, easy way to get the document from one place</p> <p>4 to another. E-mail it home, print it out on your home</p> <p>5 computer.</p> <p>6 A. Yes.</p> <p>7 Q. And either deliver it or mail it.</p> <p>8 A. Either way. But the point is, is that it was</p> <p>9 directed out of the unit and directed -- and eventually came</p> <p>10 in possession of Attorney Villella.</p> <p>11 MR. McNAIR: Objection. There's no foundation for</p> <p>12 that.</p> <p>13 Q. Did you ever find out whether or not Mr. Villella</p> <p>14 had knowledge of the document, if not actual, physical</p> <p>15 possession of the document, prior to the July 28th --</p> <p>16 MR. McNAIR: Objection, foundation. He's</p> <p>17 testified he never spoke to Mr. Villella.</p> <p>18 A. No, I didn't.</p> <p>19 Q. You read the transcript?</p> <p>20 A. Yes.</p> <p>21 Q. Did not the transcript indicate to you that</p> <p>22 Mr. Villella had knowledge of the document even if he didn't</p> <p>23 have possession of it?</p> <p>24 A. Yes, I meant aside from the transcript. I did</p> <p>25 read the transcript, and it's clear he had knowledge of the</p>
<p style="text-align: right;">126</p> <p>1 you're accusing him of being a liar too.</p> <p>2 MR. JOYAL: No, I'm not. He has a different</p> <p>3 recollection than Mr. Cauley does, I believe. I</p> <p>4 bet he also told you that your client called him</p> <p>5 to tell him about it.</p> <p>6 Q. Does that appear to you -- is there any -- Mr.</p> <p>7 Cauley pointed out to you that there does not seem to be a</p> <p>8 reason on May 4th for Ms. Conley to be e-mailing a document</p> <p>9 from the County to her home.</p> <p>10 A. Right.</p> <p>11 Q. Would it be fair to say that reasonable persons</p> <p>12 might think that that was the way that Ms. Conley got the</p> <p>13 document?</p> <p>14 A. It's highly --</p> <p>15 Q. -- to whoever that third party was?</p> <p>16 A. It's highly suspicious.</p> <p>17 MR. McNAIR: Objection. Argumentative.</p> <p>18 Q. Highly suspicious.</p> <p>19 A. Yes.</p> <p>20 MR. McNAIR: Objection. Argumentative.</p> <p>21 A. It's positive that it was sent to her home. And</p> <p>22 from home, eventually to Mr. Villella.</p> <p>23 Q. Or to Mr. Villella's knowledge.</p> <p>24 A. Yes.</p> <p>25 Q. It could have come from Mr. Villella's client to</p>	<p style="text-align: right;">128</p> <p>1 item before he approached the witness. Because it was in</p> <p>2 his hand.</p> <p>3 Q. Or at least he had the knowledge of it as being in</p> <p>4 her possession.</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember also seeing other e-mails in --</p> <p>7 prior to June 4th when you were reading -- reviewing these,</p> <p>8 that would have indicated that Abby Conley had some sense</p> <p>9 that someone was monitoring at least the computer screen of</p> <p>10 her e-mails?</p> <p>11 A. Yes.</p> <p>12 Q. She had told that to --</p> <p>13 A. She referenced being paranoid, or someone</p> <p>14 referenced -- asked her if she was being paranoid.</p> <p>15 Q. And this was going to Deanna Cosby, I believe; is</p> <p>16 that right?</p> <p>17 A. I believe that to be so. That's my recollection.</p> <p>18 Q. Now, Abby Conley and all employees of Erie County</p> <p>19 were aware of what the computer policy was; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And is it fair to say too that part of that</p> <p>22 computer policy makes it plain -- and employees sign that</p> <p>23 they have read it.</p> <p>24 A. Yes.</p> <p>25 Q. And is it fair to say that that policy states that</p>

<p style="text-align: right;">129</p> <p>1 documents or e-mails or anything involving the County's</p> <p>2 computer are subject to being looked at by the County?</p> <p>3 A. That's my recollection, yes.</p> <p>4 Q. Do you read the New York Times?</p> <p>5 A. On occasion, yes.</p> <p>6 Q. Did you read it that past Sunday when they</p> <p>7 interviewed Michael Chertoff?</p> <p>8 A. No, I didn't.</p> <p>9 Q. Mr. Chertoff said he doesn't use e-mail because</p> <p>10 they never go away.</p> <p>11 MR. McNAIR: What does this have to do with the</p> <p>12 case?</p> <p>13 MR. JOYAL: Well, probably about as much as the</p> <p>14 stuff you were asking about the County bill.</p> <p>15 Q. Mr. McNair asked you if you knew if anybody asked</p> <p>16 Ms. Conley whether she gave the document to Mr. Villella.</p> <p>17 Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. 10 minutes, 15 minutes worth of it. If Ms. Conley</p> <p>20 had said to you, I did not inform Mr. Villella, I didn't</p> <p>21 give the document to Mr. Villella, I didn't give the</p> <p>22 document to Mr. Villella's client, would that have stopped</p> <p>23 the concern that was -- as to how that document got into</p> <p>24 Mr. Villella's hands?</p> <p>25 A. No.</p>	<p style="text-align: right;">131</p> <p>1 obstruction of justice?</p> <p>2 A. No.</p> <p>3 Q. Now, go back to Mr. Cauley's report to you. And</p> <p>4 we'll go back to No. 5, and the last paragraph on there.</p> <p>5 And would you read that into the record, if you would.</p> <p>6 A. "Ms. Peebles" -- or the last paragraph on No. 5?</p> <p>7 Q. Right. On that page that goes over into the next</p> <p>8 page.</p> <p>9 A. "Ms. Peebles also related that during this same</p> <p>10 conversation the employee similarly impuned Supervisor Sue</p> <p>11 Deveney. She said that Ms. Deveney was going to be</p> <p>12 criminally charged with obstruction of justice. There would</p> <p>13 be a newspaper article to that effect on Friday, August 6,</p> <p>14 2004, and that she was going to be fired, and that she would</p> <p>15 face jail time. She accused Supervisor Deveney of</p> <p>16 improprieties in editing/correcting court summaries or</p> <p>17 documents that she herself had prepared."</p> <p>18 Q. Now, during the course of the examination of</p> <p>19 Ms. Conley on July 28th, do you recall during the transcript</p> <p>20 that Ms. Conley admitted that she did not have the ability</p> <p>21 to make any opinions regarding parenting skills?</p> <p>22 A. Yes.</p> <p>23 Q. She said that under oath in court; is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. She also testified that that was common practice,</p>
<p style="text-align: right;">130</p> <p>1 MR. McNAIR: Objection. Argumentative and</p> <p>2 speculative.</p> <p>3 Q. Because you might not believe what Ms. Conley had</p> <p>4 to say.</p> <p>5 A. Correct.</p> <p>6 Q. Did Ms. Conley during the September 10th meeting</p> <p>7 ever deny that she sent any of the e-mails?</p> <p>8 A. No.</p> <p>9 Q. Did she ever address any of the e-mails?</p> <p>10 A. No. We kept trying to get her to focus on the</p> <p>11 fact that she had released the information to a third party,</p> <p>12 and she just wouldn't acknowledge or direct. We showed</p> <p>13 her -- I informed her that we had reviewed her e-mail and</p> <p>14 read them all, and we know exactly what she had done, and</p> <p>15 that this was why this action was being taken.</p> <p>16 Q. She didn't want to address the issues of the</p> <p>17 e-mails, did she?</p> <p>18 A. No.</p> <p>19 Q. She wanted to address her testimony.</p> <p>20 A. Correct.</p> <p>21 Q. And did you see anywhere in the transcript of the</p> <p>22 hearing, or did you get contacted, or did anyone contact you</p> <p>23 from the court to suggest to you, whether it be the Judge or</p> <p>24 the District Attorney's Office, that there was any thought</p> <p>25 by the Court of filing charges against Sue Deveney for</p>	<p style="text-align: right;">132</p> <p>1 did she not?</p> <p>2 A. Yes, she did.</p> <p>3 Q. And that Ms. Deveney would suggest corrections or</p> <p>4 make corrections, and it was up to Ms. Conley to change</p> <p>5 those.</p> <p>6 A. That's correct.</p> <p>7 Q. And during the course of time that she was in</p> <p>8 court that day, she had the opportunity, and did, as a</p> <p>9 matter of fact, testify as to what her own observations and</p> <p>10 opinions were; isn't that right?</p> <p>11 A. Yes, she did.</p> <p>12 Q. No one stopped her from doing that, as far as you</p> <p>13 saw on the transcript?</p> <p>14 A. No, not at all.</p> <p>15 Q. You didn't see any objections made by Mr. Cauley</p> <p>16 to ask the Court not to allow her to testify.</p> <p>17 A. No.</p> <p>18 Q. Did you see anything or hear anything about anyone</p> <p>19 moving to quash a subpoena on Ms. Conley, to try to keep her</p> <p>20 from testifying in that court proceeding as to her opinions?</p> <p>21 A. No, that did not occur. As the County Solicitor,</p> <p>22 I would have certainly been aware of that, if that had been</p> <p>23 attempted.</p> <p>24 Q. Your alleged quote to the newspapers --</p> <p>25 MR. McNAIR: It's not alleged. It's admitted.</p>

<p style="text-align: right;">133</p> <p>1 Q. About being a threat to children.</p> <p>2 A. Yes.</p> <p>3 Q. Do you remember, Mr. McNair started asking you</p> <p>4 questions about whether or not you knew whether Ms. Conley</p> <p>5 had ever been accused of neglect or anything with her own</p> <p>6 children, or children under her care?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know whether or not Ms. Conley has any</p> <p>9 children?</p> <p>10 A. I do not know.</p> <p>11 Q. Do you know, if she does, whether or not -- what</p> <p>12 her relationship is with her children?</p> <p>13 MR. McNAIR: Objection. Irrelevant.</p> <p>14 MR. JOYAL: You asked the question. You opened</p> <p>15 the door, Mr. McNair. You asked about her ability</p> <p>16 to parent her children. You opened the door.</p> <p>17 Q. There have been situations both during your</p> <p>18 time -- strike that. Let me ask it this way. You've been a</p> <p>19 resident of this County for how long?</p> <p>20 A. With the exception of the time in which I was in</p> <p>21 law school and when I practiced in York County,</p> <p>22 Pennsylvania, the whole of my life.</p> <p>23 Q. And you've read stories prior to your being</p> <p>24 Solicitor about unfortunate incidents involving children,</p> <p>25 some of whom were in the care and custody of OCY.</p>	<p style="text-align: right;">135</p> <p>1 than either that of a Court or a licensed social worker,</p> <p>2 that could not be tolerated, right?</p> <p>3 MR. McNAIR: Objection. Argumentative.</p> <p>4 A. Certainly. In essence, she substituted her</p> <p>5 judgment for that of the department and the Courts.</p> <p>6 Q. Well, isn't it true, then, when the -- and this</p> <p>7 was an order signed by a judge.</p> <p>8 A. That's correct.</p> <p>9 Q. And would it not strike you as being odd that if</p> <p>10 it were not to be a confidential order, that the judge would</p> <p>11 sign an ex parte order without calling in the parties to</p> <p>12 have a hearing as to whether or not the child that was going</p> <p>13 to be born should be detained?</p> <p>14 A. Yes.</p> <p>15 Q. And in this situation, there was no such hearing;</p> <p>16 is that --</p> <p>17 A. That's my knowledge.</p> <p>18 Q. So for a reasonable person, would that not</p> <p>19 indicate that the Court believed that the order should be</p> <p>20 confidential and not be divulged to the parent?</p> <p>21 A. Yes.</p> <p>22 MR. McNAIR: Objection. Argumentative.</p> <p>23 Q. Correct?</p> <p>24 A. That's correct.</p> <p>25 Q. There are very few -- let me ask a question this</p>
<p style="text-align: right;">134</p> <p>1 A. Certainly, yes.</p> <p>2 Q. And those had to do with either parents or foster</p> <p>3 parents neglecting or abusing their children.</p> <p>4 A. Yes.</p> <p>5 Q. And you've also -- have you also heard it of</p> <p>6 parents absconding with children and having bad things</p> <p>7 happen to the children after they did that?</p> <p>8 A. Yes.</p> <p>9 Q. The fact that someone would tell a mother who had</p> <p>10 two children in care that there was an order that had been</p> <p>11 issued by a judge to take the child that was being born</p> <p>12 would be a serious matter, as far as you're concerned.</p> <p>13 MR. McNAIR: Objection. Argumentative.</p> <p>14 MR. JOYAL: I'm not arguing with him.</p> <p>15 A. It's a very serious matter, one which the County</p> <p>16 could not tolerate.</p> <p>17 Q. And if this child had been injured because the</p> <p>18 mother took the child out of the jurisdiction to either have</p> <p>19 it or -- maybe even out of the country, would subject --</p> <p>20 well, first, might be injurious to the child and a threat.</p> <p>21 A. Yes.</p> <p>22 Q. And, certainly, would be a threat if social</p> <p>23 workers who disagreed with or made their own -- strike</p> <p>24 that -- or social service aides who do not have social work</p> <p>25 degrees had made judgments that their opinion was better</p>	<p style="text-align: right;">136</p> <p>1 way. As an attorney, how many times have you been involved</p> <p>2 in any situation where a court would issue an order ex</p> <p>3 parte?</p> <p>4 A. It is the rarest of circumstances. When it was</p> <p>5 either an exigent circumstance or one which the matter had</p> <p>6 to be kept in a confidential --</p> <p>7 Q. I presume that Judge Kelly is not one by</p> <p>8 reputation who allows the rights of litigants to be trampled</p> <p>9 on by one party coming in looking for an order unless she</p> <p>10 has the ability to issue the order; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Unless she believes that it's in the best interest</p> <p>13 of the child to have that order issued.</p> <p>14 A. That's correct.</p> <p>15 Q. There was nothing stopping Judge Kelly when OCY</p> <p>16 came in with the petition to say, I'm not issuing this</p> <p>17 order, I'm going to have a hearing.</p> <p>18 A. That's correct.</p> <p>19 Q. At the time that you and Mr. Schenker went to the</p> <p>20 Erie Times for that meeting --</p> <p>21 A. Yes.</p> <p>22 Q. -- in your mind, had it been determined that the</p> <p>23 possible and probable termination of Abby Conley was based</p> <p>24 solely upon her actions regarding her release of</p> <p>25 confidential information both concerning the detention order</p>

<p style="text-align: right;">137</p> <p>1 and PW?</p> <p>2 MR. McNAIR: Objection, argumentative.</p> <p>3 A. Yes. And, primarily, the detention order.</p> <p>4 Q. And if you had given that information to</p> <p>5 Mr. Schenker, then any statement that he made that we are</p> <p>6 not firing her because she was a quote/unquote whistleblower</p> <p>7 would have been a true statement.</p> <p>8 A. That's correct.</p> <p>9 Q. That was the County's position.</p> <p>10 A. It is. It still is.</p> <p>11 MR. JOYAL: I don't have anything else.</p> <p>12 MR. DEVLIN: I have no questions.</p> <p>13</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MR. McNAIR:</p> <p>16</p> <p>17 Q. Mr. Onorato, you said that you were aware of</p> <p>18 instances where people had absconded with children and harm</p> <p>19 later came to them. Would you please identify each such</p> <p>20 instance that you are aware of.</p> <p>21 A. I've read about it and heard about this occurring</p> <p>22 both on a -- on a national level. I don't know of any</p> <p>23 specific instance where that has occurred.</p> <p>24 Q. Are you aware of any instance where any parent has</p> <p>25 absconded or taken a child out of the jurisdiction as a</p>	<p style="text-align: right;">139</p> <p>1 Q. It is your legal opinion that those two sections</p> <p>2 that Mr. Joyal was kind enough to provide you with prohibit</p> <p>3 somebody who has observed a child being ill treated by</p> <p>4 another adult, if they report that, they are not permitted</p> <p>5 to talk to somebody about that.</p> <p>6 MR. LANE: Objection to form.</p> <p>7 Q. Is that your interpretation?</p> <p>8 A. I think that that code is applicable to</p> <p>9 individuals within the department talking about matters</p> <p>10 which are being investigated. And that's, I believe,</p> <p>11 what --</p> <p>12 Q. You would agree with me that the investigation was</p> <p>13 over in -- August 6th.</p> <p>14 A. Then all the more reason why she should not be</p> <p>15 talking about it.</p> <p>16 Q. Okay. Now, Mr. Joyal asked you if Ms. Conley</p> <p>17 should substitute her judgment for the caseworker. And I</p> <p>18 think you said that, of course not, she shouldn't. What if</p> <p>19 the caseworker hadn't seen the child or the mother in four</p> <p>20 months, and Ms. Conley had seen them twice a week? Who</p> <p>21 would be in a better position to give information to the</p> <p>22 Court about the relationship between the mother and the</p> <p>23 children?</p> <p>24 MR. JOYAL: Objection. Lack of foundation.</p> <p>25 MR. LANE: Objection. Lack of foundation.</p>
<p style="text-align: right;">138</p> <p>1 result of the disclosure of a prenatal detention order?</p> <p>2 A. I know that that's a legitimate fear of the</p> <p>3 department.</p> <p>4 Q. I am asking you if you are aware --</p> <p>5 MR. LANE: Hang on. Don't yell at the witness.</p> <p>6 The reason these depositions get out of control is</p> <p>7 that you yell at the witness.</p> <p>8 MR. McNAIR: I'm not yelling at the witness. He</p> <p>9 apparently can't hear me --</p> <p>10 MR. LANE: You're yelling at me. Now you're</p> <p>11 yelling at me.</p> <p>12 MR. McNAIR: -- because he's not answering the</p> <p>13 question.</p> <p>14 MR. LANE: Stop questioning. Show some respect to</p> <p>15 somebody in the world, Mr. McNair.</p> <p>16 MR. McNAIR: With all due respect --</p> <p>17 MR. LANE: Stop questioning. Okay.</p> <p>18 MR. McNAIR: Fine.</p> <p>19 Q. Are you aware of any instance where that has ever</p> <p>20 happened?</p> <p>21 A. No. I cannot specify an instance. However, it is</p> <p>22 a foreseeable occurrence, one which should be protected</p> <p>23 against.</p> <p>24 Q. Move to strike as not responsive.</p> <p>25 A. How is that nonresponsive?</p>	<p style="text-align: right;">140</p> <p>1 Requires speculation.</p> <p>2 A. Let me answer it this way. Nurses do not diagnose</p> <p>3 illnesses; doctors do.</p> <p>4 Q. Nurses record observations, right?</p> <p>5 A. I believe that's the role of a nurse. I think</p> <p>6 that this function -- she has a function, the caseworker has</p> <p>7 a function. Her -- she went beyond the scope of her</p> <p>8 function.</p> <p>9 Q. Okay. If you have a caseworker who hasn't seen --</p> <p>10 hasn't performed her duties for four months.</p> <p>11 A. How do you know she hasn't performed her duties?</p> <p>12 Q. And is recommending to the Court that the Court</p> <p>13 terminate a parent's rights with respect to her children, is</p> <p>14 that not something that anybody would -- should be concerned</p> <p>15 about?</p> <p>16 MR. DEVLIN: Objection to form.</p> <p>17 A. I don't know that that was the case in this</p> <p>18 matter.</p> <p>19 Q. I'm sure you don't.</p> <p>20 MR. JOYAL: Neither do you, Mr. McNair.</p> <p>21 Q. Assuming it was.</p> <p>22 MR. LANE: Objection to form. Lack of foundation.</p> <p>23 Requires speculation. Overly broad. You can</p> <p>24 answer, if you can.</p> <p>25 A. I don't know that that was the circumstance here.</p>

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<p>1 And I cannot -- I don't choose to speculate.</p> <p>2 Q. And it's your opinion -- I'm not asking you to</p> <p>3 speculate. I'm asking a hypothetical question.</p> <p>4 MR. LANE: It requires speculation.</p> <p>5 MR. McNAIR: I provided the facts.</p> <p>6 MR. LANE: It's not --</p> <p>7 MR. McNAIR: It's a hypothetical question. I</p> <p>8 provided the facts.</p> <p>9 MR. LANE: You didn't provide all the facts. It's</p> <p>10 way too broad. It would require speculation. You</p> <p>11 know that. Come on.</p> <p>12 Q. And you're saying you need to be a degreed social</p> <p>13 worker in order to determine whether someone is displaying</p> <p>14 appropriate parenting skills.</p> <p>15 MR. JOYAL: Objection. Overly broad.</p> <p>16 A. We all can have opinions. However, the opinions</p> <p>17 that her -- what she was doing was exercising her judgment</p> <p>18 for that of clinical judgment of professionals.</p> <p>19 Q. I'm asking you whether or not a person who does</p> <p>20 not have a degree in social work is capable of commenting on</p> <p>21 the parenting skills of another person.</p> <p>22 A. It depends on the person.</p> <p>23 Q. Okay. Well, you know Abby is not capable of that</p> <p>24 for what reason?</p> <p>25 A. I don't know Abby at all, so I don't know whether</p>	<p>1 Q. Okay. But you're not sure?</p> <p>2 A. It's my recollection, so.</p> <p>3 MR. McNAIR: That's it.</p> <p>4 MR. LANE: We'll read.</p> <p>5</p> <p>6 (Deposition concluded at 2:15 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 or not she is or not. I only know her -- as a matter of</p> <p>2 fact, this meeting and the September -- and the depositions.</p> <p>3 Q. Speaking of the September 10th meeting. The union</p> <p>4 representative asked you to see the e-mails that you were</p> <p>5 talking about, didn't she? Do you recall that?</p> <p>6 A. I don't recall that. I know we had them there.</p> <p>7 And I think we may have -- I know we had them. I had the</p> <p>8 packet of information which Mr. Cauley provided for us. I</p> <p>9 literally went through Item 1 and really stuck with Item 1.</p> <p>10 And advised of the e-mails. And I showed Abby the e-mails.</p> <p>11 I said, isn't this true that you sent this, isn't it true,</p> <p>12 Abby, that you sent this to Deanna Cosby, isn't it true that</p> <p>13 you sent it to her with intent that she knows what's going</p> <p>14 on.</p> <p>15 Q. You're telling me that you made those</p> <p>16 statements -- you made those statements in the presence of</p> <p>17 the union representative.</p> <p>18 A. I believe I did.</p> <p>19 Q. You believe that?</p> <p>20 A. Um-hum.</p> <p>21 Q. What do you mean you believe it? Either you did</p> <p>22 or you didn't. Under oath, did you or not?</p> <p>23 A. I think I did.</p> <p>24 Q. You think you did.</p> <p>25 A. My recollection of that is that I did that, yes.</p>	



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26:1,9 30:3	<b>11:01</b> 125:17	<b>2000</b> 12:11	<b>3700</b> 2:16	<b>98</b> 3:11
50:10 70:20	<b>11:41</b> 125:10,10	58:20	<b>3820</b> 2:5	
74:16 119:5	<b>11:42</b> 125:10	<b>2001</b> 13:25		
122:14	<b>117</b> 3:5	<b>2002</b> 14:3	<b>4</b>	
<b>Z</b>	<b>12</b> 10:10 14:8	<b>2003</b> 8:18 29:7	<b>4</b> 3:4 92:4	
<b>zero</b> 24:21 25:4	23:18,20 24:3	<b>2004</b> 11:23	118:12 124:24	
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<b>\$</b>	<b>12:35</b> 76:6	30:8 32:7	<b>4th</b> 118:24 119:3	
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109:11	<b>120</b> 2:8	72:1 119:3,6	128:7	
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	<b>137</b> 3:6	131:14	<b>40</b> 5:11,12	
<b>0</b>	<b>15</b> 129:19	<b>2005</b> 8:18		



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Article published Sep 12, 2004

## Whistleblower ousted

**County aide had testified supervisor altered document in child-welfare case The disputed changes County backs supervisor**

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By [Ed Palattella](#)  
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At a court hearing in late July, an aide in the Erie County Office of Children and Youth testified that her supervisor altered a court document, a practice the aide called "not appropriate."

The aide is now out of a job.

Erie County Executive Rick Schenker on Friday arranged for the dismissal of the employee, Abby Conley, who had worked with troubled families for four years as an OCY social-service aide.

Schenker and his top legal adviser, county Solicitor John Onorato, declined to comment on the reasons behind the dismissal, saying county personnel rules prohibit them from discussing the case in detail.

Schenker and Onorato, however, did tell the Erie Times-News that Schenker was not letting Conley go because she was a "whistleblower" or because she testified against OCY.

Onorato said he and Schenker are comfortable with the decision. He said Conley ultimately resigned, though he acknowledged Schenker told the Erie Times-News that Schenker had planned to terminate Conley from her position.

Conley declined comment. She had worked for Erie County government for 13 years, including the four years with OCY. Conley is a former candidate for Erie City Council, and was vice chairwoman of the city of Erie's Human Relations Commission, which became the Erie County Human Relations Commission.

The court hearing at which Conley testified was July 28 before Erie County

**DEPOSITION  
EXHIBIT**

Onorato #1

Judge Elizabeth Kelly. The hearing concerned the case of 2-year-old twin girls whom OCY had removed from their parents.

Conley, the aide on the case, was critical of her superior at OCY and provided testimony that was damaging to OCY's position. OCY came into court opposing reunification of the twins with their parents. Kelly ended up ruling against the agency.

Conley testified about the problems she had with OCY's handling of the case. At one point she said she was concerned about testifying, and she started to cry.

"What are you concerned about?" Kelly asked Conley, according to a transcript of the hearing.

"That I'm going to get into trouble," Conley replied.

"What kind of trouble?" Kelly said.

"I'm going to lose my job," Conley said.

"Why are you afraid of that?" Kelly said.

"Because some of the things they've done (are) not appropriate, and I don't want to lie," Conley said.

"You don't need to be afraid," Kelly replied. "And you are to never lie in this courtroom, and you are not going to lose your job based on anything that occurred in this courtroom today."

"OK," Conley said.

Conley also testified that, at that point, no one at OCY had threatened to fire her over what she might say in court. Without going into detail, Conley also said she had other professional difficulties with her superiors at OCY.

The dismissal of Conley and the events leading up to it come at a sensitive time for OCY, which investigates allegations of child abuse and neglect and places dependent children in foster homes or with adoptive parents.

The agency is the subject of an internal probe and a state investigation into its handling of the case of 15-year-old Brittany Legler, who died May 9 after collapsing at the home of her adoptive mother, Lisa M. Iarussi.

Iarussi is awaiting trial on the felonies of aggravated assault and endangering the



welfare of a child and the misdemeanor of recklessly endangering another person.

Police allege she caused more than 200 bruises and other injuries to Legler, whom she adopted in 2001.

According to the arrest warrant for Larussi and other information in the case, the Millcreek Township School District repeatedly complained of the suspected abuse to OCY, though the office did not forward the complaints to the police.

Conley was not involved in the Larussi case, and she did not mention that case during her testimony at the hearing about the twins.

The lawyer for the mother of the twins called Conley as a witness at that hearing. The mother and father asked to be reunited with the twins, while OCY, claiming suspected abuse, wanted to terminate the parents' rights and have the children put up for adoption.

The parents' lawyers argued the abuse claims lacked substantiation. The children were in foster care at the time of the hearing, though the parents had met with them in supervised visits.

As the aide on the case, Conley observed how the parents interacted with the children and wrote summaries for presentation in court. She testified that her supervisor on the case, Sue Deveney, altered Conley's evaluation of the mother to make it less favorable.

Reading from documents submitted as evidence, Conley said she originally wrote: "This social-service aide has no concerns or recommendations when it comes to parenting needs in the current or the future when it pertains to (the mother). She clearly excels in her parenting abilities."

Conley said Deveney changed that section to read: "(The mother) displays appropriate parenting skills during supervised visitations at the agency."

In another section of the summary, Conley testified, she wrote that the mother "does exceptionally well parenting and interacting with her children during visits. She is consistently involved with both her twin daughters and equally divides herself between the two of them."

Deveney, Conley testified, changed her summary by taking out the word "exceptionally."

Judge Kelly commented on the changes while Conley was on the witness stand. The differences in the summaries, Kelly said, "are very clear to me."

Conley went on to testify that she realized Deveney, as the supervisor on the case, had "the right to correct my court summaries." But Conley testified that professional disagreements with Deveney prompted her to ask to be taken off the twins' case and out of Deveney's unit. Conley said OCY granted those requests.

"I didn't share the opinion of my supervisor" on the twins' case, Conley testified. "And it was apparent that my opinion (and) professional involvement was different than her professional opinion."

Gerald Villella, the lawyer for the twins' mother, asked Conley if she had ever written negative reports about parents during her career at OCY. Conley said she had.

"Ever stopped from doing that?" Villella said.

"No, no," Conley testified.

"Ever been corrected by your supervisor for doing that?" Villella asked.

"My punctuation has always been corrected because I make mistakes," Conley said.

"No one ever told you couldn't render an opinion on that, did they?" Villella said.

"No," Conley replied.

After hearing Conley's testimony, as well as the testimony of the twins' parents, Kelly issued her ruling. In a setback to OCY's pursuit of termination of parental rights, Kelly ruled that the goal of the case is for the twins to be reunified with their parents, and that OCY "is directed to continue to work actively with these parents towards that goal.

"At this point in time we need to move cautiously to be sure that we ensure the best interests of these children," Kelly said.

Deveney, Conley's super-visor, did not testify at the hearing.

Onorato, the county solicitor, said he reviewed a transcript of the hearing, and said the county found no problems with how Deveney and other supervisors handled the case.

He said he disagreed with Conley's testimony about the alteration of the court summary.

"I am not aware that is what actually occurred," Onorato said.

He also said, "I am confident that after reviewing the transcript and checking into the matter that the Office of Children and Youth acted in a manner that is consistent with the policies and procedures of the office."

ED PALATTELLA, can be reached at 870-1813 or by e-mail.

Last changed: Sep 11, 2004

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Friday, September 10, 2004

Debra Liebel,  
Director  
Office of Children and Youth  
154 West 9<sup>th</sup> Street  
Erie, PA 16501

Re: My Resignation

Dear Ms. Liebel:

Please accept this as my voluntary resignation from my position with the Office of Children and Youth. I am voluntarily relinquishing my name badge, and any and all County property within my control or in my position.

I am also, by affixing my signature, releasing the County of Erie and The Office of Children and Youth, from any and all claims arising out of my employment with the County.

In turn I am requesting that should I apply for Unemployment Compensation, said application will not be challenged by the County.

I am also requesting that any and all communication with any and all potential employers be limited to confirming the dates worked and the positions held by the Respondent.

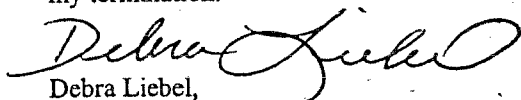
Finally, I promise that I will not disclose, disseminate, publicize, comment or speculate on the nature or cause of my termination or any other confidential information.

Sincerely,



Abby Conley

We hereby accept your voluntary resignation and the terms thereof, and on behalf of the County, I We promise that we will not disclose, disseminate, publicize, comment or speculate on the nature or cause of my termination.



Debra Liebel,



Peter J. Callan

9/10/04

9/10/04

DEPOSITION  
EXHIBIT

Onorato #2



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Article published Jan 17, 2005

## County's legal bills mount

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By [Ed Palattella](#)  
[ed.palattella@timesnews.com](mailto:ed.palattella@timesnews.com)

**Schenker administration pays \$56,000 to law firm in ouster of OCY aide**  
Erie County government has spent \$56,000 to defend the ouster of a child-welfare aide, and the amount is likely to grow as the dispute goes on.

The administration of County Executive Rick Schenker paid the money to an Erie law firm in the case of Abby Conley, who resigned from her \$27,437-a-year job with the county Office of Children and Youth on Sept. 10.

Conley claimed she was wrongfully forced out after she tried to expose wrongdoing at OCY, and in late September she asked the state Civil Service Commission to reinstate her. Conley withdrew the appeal the day before the commission was to hear it in late November.

The law firm the county hired, MacDonald, Illig, Jones & Britton, spent seven weeks preparing for the appeal and received \$56,371 for its work, according to county billing records.

Despite the withdrawal of the Civil Service action, the labor union for OCY, Local 2666 of the American Federation of State, County and Municipal Employees, is pursuing a grievance over Conley's ouster. MacDonald, Illig is expected to handle that case as well, said John Onorato, the solicitor for the Schenker administration.

The county has a staff of in-house lawyers on retainer. The Schenker administration hired MacDonald, Illig to handle Conley's case because of the firm's expertise in labor law and because of the unique circumstances of the Conley case, Onorato said.

Onorato said he and some of the county's other in-house lawyers, including those at OCY, were involved in the personnel action against Conley and were set to be witnesses in a case over Conley's ouster. Defending the county in a case



while being called as a witness would be "difficult and almost impossible," Onorato said. He said he was subpoenaed to testify at the hearing.

The county's liability insurance for legal claims provides no coverage unless Conley were to sue in court, Onorato said. But he said he believes the state government will reimburse the county for part of the bill.

The \$56,371 bill has become a concern of County Councilman Fiore Leone, a frequent critic of the Schenker administration and OCY.

"If it is their practice to go outside when something like this happens, then why do we have a solicitor's staff?" Leone said.

Onorato's retainer is \$31,000 a year, and the county's four assistant solicitors each have annual retainers of \$25,000, according to county records. OCY has a full-time solicitor paid a salary of \$71,620 a year as well as three other lawyers on retainers ranging from \$82 to \$71.75 an hour, according to OCY records. Those lawyers typically deal with child-welfare issues for OCY, which handles cases of abused and neglected children.

The lawyers at MacDonald, Illig charged the county at a rate of \$175 to \$165 an hour in the Conley case, according to the bill. The case's lead lawyer, Roger Taft, worked 163 hours at an hourly rate of \$175 for an individual bill of \$28,525. The rest of the overall bill covered the work of the other lawyers and expenses.

The accuracy of the bill is not in dispute. Onorato said he is satisfied with the work of MacDonald, Illig, which the Schenker administration three years ago hired to negotiate the county's labor contracts. Taft has been the lead lawyer on those cases.

Taft said he aggressively pursued the Conley case because, at the time, Conley was threatening to take action against the county before the Civil Service Commission and through a union grievance.

"We were ready to go," he said of the Civil Service case. "We were ready to win the case and I am convinced we would have won if it had gone forward."

Conley withdrew her claim because the proceeding was "not in her best interest," according to a letter on file with the Civil Service Commission. Conley last week said her lawyers have told her not to comment on her case.

The \$56,371 spent on the Conley case is the second large expenditure the Schenker administration has paid over OCY personnel issues in the past year. In August, in an agreement the administration initially tried to keep secret, the county paid a \$100,000 settlement to fired OCY caseworker David A. Dows.

Conley, 43, had worked for the county for 13 years, including the past four years at OCY, when she resigned Sept. 10.

Conley claimed the Schenker administration forced her to resign to get back at her for being a whistleblower. Conley's ouster came about a month and a half after she testified in court against her supervisor at OCY, whom Conley said altered court records. The Schenker administration has disputed that claim.

In her Civil Service appeal, Conley said county officials told her the day of her resignation that she had violated OCY rules by using her office e-mail to disclose the telephone number of an OCY client to the client's former caseworker. Conley said she did nothing wrong.

The Schenker administration disagrees. The county's personnel director, Peter Callan, said in an October memo that Conley disclosed a confidential OCY court order "with the intent of alerting" the pregnant mother who was the subject of it.

Onorato, in an interview last week, said the county has "mounted a vigorous defense" against Conley because of her "egregious breach of confidentiality" regarding the court order. He said the county does not want Conley to return to OCY.

"In essence," Onorato said of the \$56,371 legal bill, "the fee was being spent in the defense of children."

### **Update**

**BACKGROUND:** Abby Conley, an aide with the Erie County Office of Children and Youth, or OCY, resigned under pressure Sept 10. Conley claims the county wrongfully forced her out because she had tried to expose wrongdoing at OCY. Erie County Executive Rick Schenker's administration claims Conley was asked to resign because she violated OCY confidentiality rules.

**THE LATEST:** The Schenker administration paid the Erie law firm of MacDonald, Illig, Jones & Britton \$56,371 to defend the county against a Civil Service appeal Conley filed to try to get her job back. Conley withdrew the appeal the day before the Civil Service Commission was to hear it in November.

**COMING UP:** The labor union for OCY, Local 2666 of the American Federation of State, County and Municipal Employees, is pursuing a grievance against the county over Conley's ouster. In addition, County Councilman Fiore Leone said he is preparing to move ahead with his investigation into OCY, which he has said will include an examination of Conley's ouster.

### **County has paid firm \$334,000**

The Erie law firm of MacDonald, Illig, Jones & Britton's representation in the Abby Conley case is but one part of the work it has done for Erie County government

since County Executive Rick Schenker took office in January 2002.

Including the \$56,000 bill in the Conley case, the county had paid MacDonald, Illig \$334,255 through the end of December, according to county finance records. Of that amount, \$182,450 was payment for the work the firm has done negotiating county government's eight labor contracts.

The rest of the work ranges from environmental-law concerns to individual labor issues, such as Conley's contested ouster from the Erie County Office of Children and Youth, said John Onorato, the solicitor for the Schenker administration.

Onorato is on a \$31,000 retainer, his four assistant solicitors get retainers of \$25,000 each. Onorato said the Schenker administration has turned to the MacDonald, Illig firm because of its expertise. He called hiring the firm for certain issues "a cost of doing business" and in the best interest of Erie County government, which has an annual budget of \$240 million and 1,300 employees.

"MacDonald, Illig has provided representation for the county in matters where the county Solicitor's Office has not been able to provide support," Onorato said. "You have to use a little bit of perspective here. We negotiate eight labor contracts and we need a labor attorney."

The MacDonald, Illig firm has done work for the county in the past, including for the administration of County Executive Judy Lynch, a Democrat, who preceded Schenker, a Republican. The firm has political ties to the Schenker administration: John Mizner, a partner in the firm, is chairman of the Erie County Republican Party and was one of Schenker's biggest supporters during the 2001 campaign for county executive.

Mizner was out of the office and unavailable for comment. Onorato cited MacDonald, Illig's previous work for the county and said the firm long has been a legal resource for county government, no matter what the politics of the administration.

The Lynch administration used MacDonald, Illig for individual labor issues, but Lynch's staff negotiated the county's labor contracts on its own. That changed in early 2002, when Schenker hired the firm to handle labor contracts. County Council urged the move, citing intricacies of the labor contracts that made hiring outside counsel necessary.

The firm's lead labor lawyer on the contracts, Roger Taft, also handled the Conley case.

"I represented the Lynch administration on several matters," Taft said of his experience in county government. "I have always felt that when someone asked

for my services, it was because of my expertise, not because I was 'connected' with any political party or administration. That is not the way I do things."

ED PALATTELLA, can be reached at 870-1813 or by e-mail.

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